

2008

Rick Fikins, and All Star Motion Picture Catering Company v. Pail Reugner, Pig Boys, Ins., and Walter Zelig : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH STATE COURT OF APPEALS

RICK FIKINS, and ALL STAR
MOTION PICTURE CATERING
COMPANY,

Appellants,

v.

PAUL RUEGNER, PIG BOYS, INC.
and Walter Zelig,

Appellees

APPELLANTS' BRIEF

DC Case No. 06090631

Appellate Case No. 20080685-CA

Trial Judge: Iwasaki

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LIST OF PARTIES

Appellants:

Rick Firkins, an individual residing at 3503 E. River Park Dr., South Lake Tahoe, CA 96150

All Star Motion Picture Catering, a corporation with a business address at 3503 E. River Park Dr., South Lake Tahoe, CA 96150

Appellees:

Paul Ruegner, an individual residing at 7061 S. 2870 E., Salt Lake City, UT 84121

Pig Boys, Inc., a Utah corporation

Walter Zelig or Zelig Walter, an individual residing at an unknown address. (Walter's default was entered by the trial court.).

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JURISDICTIONAL STATEMENT

This appeal is from a final judgment of the Third Judicial District Court.

This Court has jurisdiction pursuant to Utah Code Ann. §78-3-102(3)(j) and §78-3-102(4). The present case has been transferred from the Utah Supreme Court to the Utah Court of Appeals pursuant to Utah Code Ann. §78-3-102(4).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

1. Whether there was sufficient evidence for the District Court to find that the contract between Firkins and Walters did not exist. A trial court's determination that an agreement is unenforceable is a legal conclusion that this court reviews for correctness, affording no particular deference to the trial court. *Carter v. Sorensen*, 2004 UT 33, ¶ 6, 90 P.3d 637. Citation to record for issue on appeal: (Record 139-140; Complaint, ¶ 8, 14); (Record 335; Bench Trial Transcript, p. 7, ll. 1-14).
2. Whether the District Court erred by applying the incorrect rule for measuring damages and also erred in determining the amount of the judgment. Whether the district court applied the correct rule for measuring damages is a question of law that the court reviews for correctness. *Lysenko v. Sawaya*, 2000 UT 58, ¶¶ 17, 23, 7 P.3d 783. Whether the amount awarded by the district court was supported by the evidence is a determination of fact that may be reversed on appeal only if clearly erroneous. *Id.* at ¶ 16. Citation to record for issue on appeal: (Record 335; Bench Trial Transcript, p. 153, l. 23 – p. 154, l. 12).

3. Whether Firkins converted Ruegner's property. "Whether the trial court properly applied the law of conversion is a legal question, which we review for correctness." *Fibro Trust, Inc. v. Brahman Fin., Inc.*, 1999 UT 13, ¶ 19, 974 P.2d 288. Citation to the record for issue on appeal: (Judgment, ¶5); (Record 335; Bench Trial Transcript, p. 7, ll. 1-14).

CONSTITUTIONAL OR STATUTORY PROVISIONS

No constitutional or statutory provisions are determinative of the appeal or are of central importance to the appeal.

STATEMENT OF THE CASE

Appellants Rick Firkins and All Star Motion Picture Catering filed a complaint against Defendants Paul Reugner, Pig Boys, Inc., and Zelig Walter regarding a dispute over two vehicles, a 1984 Kitchen Utility Van Trailer, VIN: 1K93F3834E1044112 and a 1994 Chevrolet CJ Class Commercial Truck, VIN: 1GBJ7HIJ4RJ105593 (“the vehicles”). In November 2001, Firkins and Walter contracted for Firkins to purchase the vehicles from Walter. Firkins titled the vehicles in Utah, and then later titled the vehicles in New Mexico. Firkins held title and possession of the vehicles from 2001 until the present.

In January 2006, Firkins stored the vehicles in Utah while he traveled out of state. While out of state, Firkins learned that the vehicles were taken and that the vehicles were in Reugner’s possession. Firkins called Ruegner several times informing him that the vehicles were his (Firkins).

In February 2006, Walter presented California titles to Ruegner and then sold the vehicles to Ruegner for \$50,000. Firkins filed the present lawsuit as the title holder of the vehicles to protect his asset alleging fraud, conversion, and unjust enrichment.

At trial, Walter did not appear and his default was entered. After a bench trial before Judge Iwasaki, the Court found that the contract between Firkins and Walter was an unenforceable contract, and that Firkins did not fulfill the terms and

conditions of the contract. The court found that the Ruegner and Pig Boys Inc. were the legal title holders to the vehicles. A judgment for \$125,655.64 was entered against Firkins. Firkins appeals the District Court decision.

STATEMENT OF FACTS

Richard Firkins (“Firkins”) has owned and operated All Star Motion Picture Catering (“All Star”) since 1986, which is a business that caters to film crews on location at a variety of venues and sets across several U.S. States. (Record 335; Bench Trial Transcript, p. 15, ll. 6-19). All Star has catered hundreds of film productions, including various T.V. shows and commercials as well as film shoots. (Record 335; Bench Trial Transcript, p. 16, ll. 1-3). As the owner of All Star, Firkins acquires these jobs through a bidding process. (Record 335; Bench Trial Transcript, p. 16 ll. 4-10). Firkins learns of these jobs through his contacts, his website, and also through word of mouth referrals. (Record 335; Bench Trial Transcript, p. 16 ll. 6-10).

Firkins had a long business relationship with Zelig Walter (“Walter”) that dates back to the late 1970s. (Record 335; Bench Trial Transcript, p. 17, ll. 4-10). At an unknown time, Firkins purchased a cube van from Walter, which is a support vehicle used in conjunction with a catering truck. (Record 335; Bench Trial Transcript, p. 17 ll. 1-4). In that transaction, Firkins gave Walter \$10,000 and

Walter signed the pick slips over to Firkins and gave possession of the cube van to Firkins. (Record 335; Bench Trial Transcript, p. 17, ll. 6-7). The transaction was not reduced to writing. (Record 335; Bench Trial Transcript, p. 17, ll.8-9). In approximately November of 2001, Walter and Firkins entered into another transaction, which is the subject of the present lawsuit. (Record 335; Bench Trial Transcript, p. 17, ll.10-18). Walter was in desperate need of selling various items, similar to a fire sale, and Firkins agreed to purchase several items. (Record 335; Bench Trial Transcript, p. 18, ll. 19-24). Walter was going through a divorce at the time and needed cash as quickly as possible. (Record 335; Bench Trial Transcript, p. 19, ll. 4-11). Firkins purchased everything in the storage unit as a lump sum, including, racks, pots, pans, coffee machines, barbecue pits, the catering truck and the trailer. (Record 335; Bench Trial Transcript, p. 18, l. 20 – p. 19, l. 15). Firkins had won the bid to cater for the Olympic Games held in Salt Lake City, UT and he needed one more catering truck to add to his fleet. (Record 335; Bench Trial Transcript, p. 19, l. 23 – p. 20 l. 3). Firkins purchased from Walter a catering truck and a Chevy truck to pull the catering truck (“the vehicles”). (Exhibit P1 and P2 from Bench Trial, also attached at Addendum).

Firkins initially thought the asking price was too high and told Walter to give him a call when he felt “real about it.” (Record 335; Bench Trial Transcript, p. 21, ll. 8-14). Walter and Firkins met in Burbank, CA to complete the

transaction. (Record 335; Bench Trial Transcript, p. 20, ll. 14-17). Firkins was unable to recall the exact purchase price, but recalled the purchase price was between \$50,000 and \$60,000. (Record 335; Bench Trial Transcript, p. 22, ll. 5-8). Walter accepted the offer from Firkins to purchase the items, and the agreement was not reduced to writing. (Record 335; Bench Trial Transcript, p. 22, ll. 1-16). Walter required the transaction to be off the books because he didn't have a bank account, and he wanted to keep money from his ex-wife who was trying to collect child support from Walter. (Record 335; Bench Trial Transcript, p. 22, ll. 19-25). Firkins handed Walter \$10,000 in cash per their agreement, with the remaining balance to be paid off after the Olympics, and Walter gave him possession of the items, including the catering truck and trailer. (Record 335; Bench Trial Transcript, p. 23 ll. 2-24). Firkins obtained trip permits for the vehicles, and transported them back to Utah to be used in the Olympics. (Record 335; Bench Trial Transcript, p. 25, ll. 16-21).

When back in Utah, Firkins started the titling procedures in April, 2002. (Record 335; Bench Trial Transcript, p. 25, l. 24 – p. 26, l. 2). Firkins was able to license and obtain Utah titles for the vehicles because Walter mailed him the pink slip and California title to the vehicles. (Record 335; Bench Trial Transcript, p. 26, ll. 3-12). Walter was not listed as a lien holder on the title, nor did he apply to be a

lien holder on the title at anytime. (Record 335; Bench Trial Transcript, p. 29, ll. 10-16).

After the Olympics and after being stored in Utah for several months, the vehicles were stored at Desmond's Yard in Los Angeles, CA. (Record 335; Bench Trial Transcript, p. 32, ll. 19-21). The vehicles were then transported to Four Star Yard and stored at no cost. (Record 335; Bench Trial Transcript, p. 35, ll. 10-16). The vehicles were then moved from Four Star Yard to Santa Clarita, with Firkins being the title holder to the vehicles, and the titles in his possession. (Record 335; Bench Trial Transcript, p. 36, ll. 2-6). Firkins tried to sell the vehicles to a few buyers, however, the sales were never completed. (Record 335; Bench Trial Transcript, p. 36, ll. 11-17).

. In the fall of 2004, Firkins and Walter entered into another deal about the vehicles, because neither of them kept clear and detailed records and because the balance was not paid after the Olympics. (Record 335; Bench Trial Transcript, p. 39, ll.3-19). Firkins gave Walter \$10,000 in cash, and also purchased a Chevy Suburban, for an unknown amount and transported the vehicles from Santa Clarita to New Mexico. (Record 335; Bench Trial Transcript, p. 40, ll. 5-16). Before moving the vehicles back to New Mexico, Firkins mailed Walter the titles in case a buyer may wish to purchase the vehicles. (Record 335; Bench Trial Transcript, p. 40, ll. 20-22). However, at the time Firkins moved the vehicles back to New

Mexico, he had misplaced the titles. (Record 335; Bench Trial Transcript, p. 41, ll. 1-6). When back in New Mexico, Firkins applied for duplicate titles from the State of Utah, and then titled the vehicles in New Mexico. (Record 335; Bench Trial Transcript, p. 41, l. 3 – p. 43, l. 20). Walter had knowledge that the vehicles and Firkins were in New Mexico, however, he again never applied for or was listed as the lien holder on the New Mexico titles. (Record 335; Bench Trial Transcript, p. 44, ll. 1-16).

Firkins made numerous payments to Walter over the course of time. After paying the initial \$10,000, he also paid \$7,000 in January of 2002. (Record 335; Bench Trial Transcript, p. 24, ll. 17-19). After the Olympics, Firkins made other payments to Walter when requested, for a thousand or five hundred at a time. (Record 335; Bench Trial Transcript, p. 32, ll. 4-10). In the fall of 2004, Firkins paid another \$10,000 to Walter. (Record 335; Bench Trial Transcript, p. 40, ll. 5-16). Starting in 2004, Firkins began keeping track of his payments to Walter, totaling \$13,950 (which does not include the \$27,000 previously paid). (Record 335; Bench Trial Transcript, p. 50, l. 16 – p. 55, l. 5). Before 2004, Walter would demand a cash payment and Firkins would pay, however, Firkins did not keep records of his payments. (Record 335; Bench Trial Transcript, p. 53, ll. 16-23). Walter kept demanding payments by making phone calls to Firkins at 3:00 am and Walter and Firkins could not have a civil conversation. (Record 335; Bench Trial

Transcript, p. 58, l. 20 – p. 59, l. 8). Firkins wrote Walter a letter stating that the balance was paid off and he needed to stop harassing him. (Record 335; Bench Trial Transcript, p. 59, ll. 15-21 and Exhibit 10).

At the end of 2005, Firkins completed the catering for American Pastime and stored the vehicles in Salt Lake City, UT. (Record 335; Bench Trial Transcript, p. 61, ll. 10-15). The vehicles were marked with the name “All Star Motion Picture Catering” and had New Mexico license plates. (Record 335; Bench Trial Transcript, p. 61, ll. 3-7). Firkins left Utah briefly, and while he was away, he learned that the vehicles were missing from one of his employees. (Record 335; Bench Trial Transcript, p. 62, ll. 9-16). Through his contacts, Firkins learned that Paul Ruegner (“Ruegner”) had taken his vehicles. (Record 335; Bench Trial Transcript, p. 63, ll. 7-16). Firkins contacted the police because Ruegner had his vehicles and informed Ruegner via voicemail that he had his vehicles. (Record 335; Bench Trial Transcript, p. 64, ll. 16-25). Firkins also told these facts to Ruegner’s wife. (Record 335; Bench Trial Transcript, p. 64, ll. 24-25). Firkins eventually took back the vehicles in March of 2006. (Record 335; Bench Trial Transcript, p. 66, ll. 3-11).

Firkins later learned that the vehicles taken in January, 2006 were sold to Ruegner by Walter. Through a third party, Ruegner and Walter made contact via telephone. (Record 335; Bench Trial Transcript, p. 167, ll. 13-18). Walter

requested that Ruegner repossess the vehicles from Firkins while Firkins was out of town and then Walter would sell the vehicles to Ruegner. (Record 335; Bench Trial Transcript, p. 167, ll. 13-18). On the 19th or 20th of January, 2006, Ruegner picked Walter up at the airport and took him to the where the vehicles were stored. (Record 335; Bench Trial Transcript, p. 174, ll. 20-25). The vehicles were marked with the words “All Star Motion Picture Catering,” and Ruegner knew that the company was owned by Firkins. (Record 335; Bench Trial Transcript, p. 196, ll. 4-22). Walter showed Ruegner titles for the vehicles, however the titles were in Firkins’ name and Ruegner requested Walter to produce clean titles to the vehicles. (Record 335; Bench Trial Transcript, p. 176, ll. 6-12). The titles Walter produced had Firkins name on them. (Record 335; Bench Trial Transcript, p. 197, ll. 19-24). In Ruegner’s presence, Walter called a locksmith to break into the vehicles because he didn’t have keys, in an effort to repossess the vehicles. (Record 335; Bench Trial Transcript, p. 177, ll. 20-23). Ruegner then took possession of the vehicles and stored them on his father’s property until Walter could produce clean title. (Record 335; Bench Trial Transcript, p. 178, ll. 6-12); (Record 335; Bench Trial Transcript, p. 198, ll. 12-21). During this time, Ruegner was receiving phone calls from Firkins informing him that he (Firkins) owned the vehicles. (Record 335; Bench Trial Transcript, p. 199, l. 19 – p. 200, l. 12).

While the vehicles were stored in Utah by Ruegner, Walter obtained California titles to the vehicles. Ruegner only moved the vehicles from his father's property to have them weighed. (Record 335; Bench Trial Transcript, p. 201, ll. 1-9). The certification of title from the State of California stated that the vehicles were inspected by Ted Miller in the State of California on January 25, 2006, when the vehicles were actually stored on Ruegner's father's property in Utah. (Record 335; Bench Trial Transcript, p. 201, ll. 10- p. 202. l. 18). The application for California titles bear Firkins signature, however, Firkins testified that the signature was not his. (Record 335; Bench Trial Transcript, p. x, ll.); (Exhibit P 13, also attached at Addendum). California issued the titles in Walter's name, based upon Firkins forged signature and the certification by Ted Miller that the vehicles were inspected. Ruegner never investigated whether the vehicles were actually owned by Firkins. (Record 335; Bench Trial Transcript, p. 205, l. 22 – p. 206, l. 3).

In the middle of February, 2006, Walter called Ruegner and stated that he had the titles cleared up and that he would come into town to complete the deal. (Record 335; Bench Trial Transcript, p. 179, ll. 15-22). When Walter arrived in town, Walter presented California titles to the vehicles that had been issued in the past few weeks. (Record 335; Bench Trial Transcript, p. 203, ll. 19-22). Walter and Ruegner signed the bill of sale and Walter signed a receipt for the \$50,000 cash he received for the vehicles. (Record 335; Bench Trial Transcript, p. 180, ll.

9-14; Exhibits P 6, P 7, P44 and P45). Ruegner did not think it was unusual that Walter demanded \$50,000 in cash and he did not think it was odd that after he declined to accept the Utah titles in Firkins' name, Walter was able to produce California titles in Walter's name. (Record 335; Bench Trial Transcript, p. 207, l. 19 – p. 208, l. 9).

SUMMARY OF ARGUMENT

Firkins and Walter formed an enforceable and binding contract in regards to the sale of the vehicles. There was an offer, an acceptance, and consideration; all requirements for the formation of a contract was met. Title to the vehicles passed to Firkins, and Walters collected \$40,000 - \$55,000 from Firkins (Firkins is unable to specifically recall, but paid at least \$40,000). At the formation of the contract there was a meeting of the minds. Several years after the fact, Firkins is unable to recall the purchase price, however, when formed a contract existed and became binding. For several years following, the parties behaved per the contract – Firkins held title and Firkins made cash payments to Walter. Therefore, Firkins is the legal title holder and owner of the vehicles.

Even if an express contract did not exist between Firkins and Walter, an implied contract in fact existed. The parties behaved and performed per the agreement. Firkins relied on this agreement and paid \$40,000 to \$55,000 to

Walter. Walter never filed suit alleging that Firkins did not fulfill the terms of the agreement.

Because Firkins is the legal title holder, he did not convert Ruegner's property. He was legally justified in possessing and using the vehicles. Therefore, Firkins is not liable for conversion. Instead, Walter and Ruegner converted Firkins property. As stated at trial, Ruegner and Walter broke into the vehicles and stored them on Ruegner's father's property until Walter could show legal title. Thus, Walter and Ruegner converted the property. By forging Firkins' name on the Utah titles and some how having the vehicles inspected in the State of California when they were in Utah, Walter and Ruegner defrauded Firkins. With the California titles, Walter transferred possession to Ruegner, who then re-titled the vehicles in his own name in Utah.

Firkins requests the Court reverse the District Court's decision and rule that Firkins and Walter had an enforceable contract and that Firkins is the legal owner and title holder of the vehicles.

ARGUMENT

I. The District Court Erred in Concluding that a Contract Did Not Exist Between Firkins and Walters and that Defendants had Legal and Equitable Title to the Vehicles

There was insufficient evidence for the District Court to find that the contract was unenforceable between Firkins and Walters and that the Defendants

had legal and equitable title to the vehicles. Firkins held legal title to the vehicles since the November 2001 agreement between Firkins and Walters was formed. As title holder, Firkins held the status as owner and Firkins held title without challenge for nearly four years. The evidence at trial is insufficient to support the conclusion that the contract was unenforceable.

To successfully challenge findings, “an appellant must first marshal all the evidence supporting the findings and then demonstrate that the evidence is legally insufficient to support the findings even in viewing it in the light most favorable to the court below.” *Reid v. Mutual of Omaha Ins. Co.*, 776 P.2d 896, 899 (Utah 1989). The District Court’s conclusions that the Defendants held equitable title and that a contract did not exist between Firkins and Walter are supported by the following facts as cited in the record (marshaled as follows):

The District Court found that there was no contract between Firkins and Walter in the November 2001 transaction. The court took note of the fact that the agreement was not in writing and that there was no purchase price pursuant to this agreement. (Record 335; Bench Trial Transcript, p. 22, ll. 5-8); (Record 335; Bench Trial Transcript, p. 22, ll. 1-16). Several terms were missing from this agreement, namely, the purchase price, the length of the contract, when the loan was to be repaid, the terms of the repayment, what was to occur in the event of forfeiture, and what were the penalties for non-compliance. (Record 335; Bench

Trial Transcript, p. 231, ll. 1-13). Firkins also did not fulfill the terms of the contract by not having proof of payment of the fiftyish purchase price. (Record 335; Bench Trial Transcript, p. 231, ll. 13-17). Also, Firkins and Walter both did not keep accurate records of what the running balance was due to Walter. The second agreement in November 2004 between Firkins and Walter was a modification of a non-existing contract, and therefore was not a contract. (Record 335; Bench Trial Transcript, p. 232, ll. 1-12). The payments presented by Firkins at trial were after the November 2004 agreement, however, there was still no purchase price that Firkins could recall. (Record 335; Bench Trial Transcript, p. 232, ll. 2-12). Because a contract did not exist, and because Firkins did not fulfill the terms of the contract, Firkins had no legal right to the property. (Record 335; Bench Trial Transcript, p. 232, ll. 18-23). The transaction between Ruegner and Walters resulted in a valid contract. The transaction included a bill of sale, a receipt, and transfer of title. (Record 335; Bench Trial Transcript, p. 233, ll. 5-12). There was a purchase price and a payment of a price and therefore legal title vests with Defendants. (Record 335; Bench Trial Transcript, p. 234, ll. 7-12). Despite this evidence presented at trial, it is insufficient to support the conclusion that the contract was unenforceable.

(A) A Valid Contract Existed Between Firkins and Walters

When Firkins and Walters agreed to complete the sale of the vehicles, a valid and enforceable contract between the parties was formed. There was an offer, an acceptance, consideration, and performance by the parties. Firkins and Walter had a meeting of the minds as to how the parties were to behave once the transaction was completed. Firkins and Walters exchanged the vehicles, signed the necessary documents, agreed on a price, and Firkins made payments pursuant to Walter's demands. Thus, an enforceable, binding contract was created between the parties.

The trial court erred in determining that the contract between Firkins and Walter was unenforceable. A trial court's determination that an agreement is unenforceable is a legal conclusion that this court reviews for correctness, affording no particular deference to the trial court. *Carter v. Sorensen*, 2004 UT 33, ¶ 6, 90 P.3d 637. However, the contract was enforceable and the parties' actions support this conclusion.

Firkins and Walter entered into an oral agreement because Walter wanted to hide assets from his wife in the course of a divorce. "The issue of whether an oral contract or agreement exists presents questions of both law and fact." *Flake v. Flake* (In re Estate of Flake), 2003 UT 17, ¶ 27, 71 P.3d 589; see also *Nunley v. Westates Casing Servs., Inc.*, 1999 UT 100, ¶ 17, 989 P.2d 1077 ("Whether a

contract has been formed is ultimately a conclusion of law, but that ordinarily depends on the resolution of subsidiary issues of fact.”). “In determining whether the parties created an enforceable contract, a court should consider all preliminary negotiations, offers, and counteroffers and interpret the various expressions of the parties for the purpose of deciding whether the parties reached agreement on complete and definite terms.” *Flake*, 2003 UT 17, ¶ 28. In viewing the actions of Firkins and Walter, the parties had a lengthy history. The two parties had known each other from the late 1970s. (Record 335; Bench Trial Transcript, p. 17, ll. 4-10). Firkins had also purchased another vehicle from Walter on an oral agreement. (Record 335; Bench Trial Transcript, p. 17, ll. 1-4). At first, Firkins denied the initial offer to purchase the inventory and vehicles, and when Walter extended another offer, Firkins accepted. (Record 335; Bench Trial Transcript, p. 21, ll. 8-14). Therefore, the preliminary negotiations, the initial offer and then the subsequent offer show that Firkins and Walter expressed the desire and willingness to negotiate an agreement of complete and definite terms. It is only several years later that Firkins is unable to recall the agreed purchase price. Firkins never testified that a price was not reached, only that he could not recall. Therefore, the present case is different from *Carter v. Sorenson*, where a contract was found unenforceable because the parties did not agree on a price. *Carter v. Sorensen*,

2004 UT 33, ¶ 6, 90 P.3d 637. When the contract was formed, Firkins and Walter agreed on a purchase price; however Firkins is unable to recall the price.

The essential elements of contract formation were present here. See *Golden Key Realty, Inc. v. Mantas*, 699 P.2d 730, 732 (Utah 1985) (indicating that the essential elements of a contract include “offer and acceptance, competent parties, and consideration”). It has not been argued that the parties are not competent, so this element is not at issue. Between Firkins and Walters, both competent parties, an offer was extended and the offer was accepted. See *DCM Inv. Corp. v. Pinecrest Inv. Co.*, 2001 UT 91, ¶ 12, 34 P.3d 785 (“A bona fide offer is one made in good faith which, on acceptance, would be a valid and binding contract. For an offer to be one that would create a valid and binding contract, its terms must be definite and unambiguous.”). Firkins offered to purchase Walter’s catering truck and other inventory and Walter agreed to sell to Firkins. Firkins initially thought the asking price was too high and told Walter to give him a call when he felt “real about it.” (Transcript, p. 21, ll. 8-14). This shows that the parties discussed and negotiated a purchase price, however, six years later Firkins has trouble recalling the purchase price. Firkins was unable to recall the exact purchase price, but recalled the purchase price was between \$50,000 to \$60,000. (Record 335; Bench Trial Transcript, p. 22, ll. 5-8). Walter decided not to involve himself in the present action and did not offer any evidence or testimony as the purchase price, or that

Firkins did not pay the purchase price by 2005. Furthermore, Walter never filed any action against Firkins for non payment, nor did he insist on being a lien holder on any issued title. The parties that contracted, Walter and Firkins, have no legal dispute over payment of money or any balance due. The only issue is who is the legal title holder: Firkins, Walter or Ruegner.

Eventually, Walter accepted the offer from Firkins to purchase the items, and the agreement was not reduced to writing, as part of the agreement between the parties. (Record 335; Bench Trial Transcript, p. 22, ll. 1-16). Walter desired to hide assets and money from his ex-wife, therefore, this was a term of the oral contract: the payments were to be in cash and the agreement was to be off the books. (Record 335; Bench Trial Transcript, p. 22, ll. 19-25). The parties' behaviors through the later years support this assertion; the parties exchanged possession of the trucks, an initial payment was received by Walter of \$10,000, the parties signed the necessary documents to transfer title, and Firkins agreed to pay the balance by the end of the Olympics.

The disadvantage that Firkins faces is that he is unable to remember the exact purchase price. This is the only term that was missing. The parties agreed to pay at the end of the Olympics, that the payments were to be in cash, and the agreement was to be "off the books." This agreement was later modified to extend the payment term, however the parties did not agree to a schedule. Even though

Firkins can not recall the exact purchase price, this does not mean that a purchase price was not agreed upon. This transaction occurred while he was preparing to cater for the Olympics and during a time when he completed many transactions. He is unable to recall the exact purchase price, however, he was following the instructions of Walter to not have any writing of the transaction. Nonetheless, a valid contract existed between the parties at formation, even though a term could not be recalled several years later. In November 2004, the contract was modified to extend the time to pay the purchase price, however, Firkins still held title and Walter still received payment from Firkins. A contract still bound the parties.

Furthermore, when the parties entered into the contract, the behaviors do not support the position that a contract was not formed. Firkins made an offer to purchase the vehicles, and Walters accepted the offer. After the offer and acceptance the parties behaved as if the contract was binding and enforceable. Firkins paid \$10,000 cash and Walters turned over possession of the vehicles. *See Nunley v. Westates Casing Servs., Inc.*, 1999 UT 100, ¶ 27, 989 P.2d 1077 (“ ‘An acceptance must unconditionally assent to all material terms presented in the offer, including price and method of performance, or it is a rejection of the offer.’ ”) (quoting *Cal Wadsworth Constr. v. City of St. George*, 898 P.2d 1372, 1376 (Utah 1995)). For several years, Firkins made cash payments to Walter. At no time did Walter file an action against Firkins alleging that the purchase price was not paid

by Firkins. Walter only repossessed the vehicles in an effort to defraud Firkins out of his claim in the vehicles and make more money off the vehicles from Firkins and Ruegner. Walter received money for the vehicles from both Firkins and Ruegner.

In the present case, the contract was clear enough for the parties to perform. Firkins took the vehicles from Walter's possession, and Walter relinquished possession of the vehicles. Walter signed necessary documents to transfer title to Firkins. Walters also accepted payment from Firkins for several years. Therefore, the contract was not so uncertain or indefinite that the intentions of the parties cannot be ascertained. The parties' behavior supports that a binding contract existed, even though both did not keep accurate records of payments. The parties do not dispute if money is owed, the issue is who is the proper title holder. Thus, a valid contract was formed between the parties.

Firkins' actions show that he relied upon the oral agreement. Over the course of several years, Firkins made cash payments to Walter when demanded. This performance by Firkins results in an enforceable contract. Partial performance of an oral contract can only result in enforcement of the contract if "(1) the oral contract and its terms are clear and definite, (2) the acts done in performing the contract are equally clear and definite, and (3) the acts are in substantial reliance on the oral contract." *Jenkins v. Percival*, 962 P.2d 796, 801

(Utah 1998); see *Martin v. Scholl*, 678 P.2d 274, 275 (Utah 1983). Firkins agreed to a purchase price, and relying upon their agreement, made cash payments to Walter in excess of \$40,000. There is no other reason why Firkins would make substantial cash payments to Walter besides fulfilling his duty under the contract. Firkins substantially relied upon the oral contract to make the cash payments in order to be the legal title holder to the vehicles. Although Firkins never kept accurate records as to all of his payments, his obligation was clear to Walter when requested. At the time of formation the terms were clear to the parties, however several years later Firkins was unable to recall the agreed upon price.

(B) An Implied in Fact Contract Existed Between Firkins and Walters

Even if the Court finds that an expressed contract did not exist between Firkins and Walter, a contract implied in fact did exist because Walter and Firkins behaved as though a valid and enforceable contract existed. Whether a contract implied in fact exists is generally considered a question of fact, and this court reviews a trial court's factual findings under the deferential clearly erroneous standard. See *Ryan v. Dan's Food Stores, Inc.*, 972 P.2d 395, 401 (Utah 1998); *Sorenson v. Kennecott-Utah Copper Corp.*, 873 P.2d 1141, 1144 (Utah Ct.App.1994). However, the court “retains the power to decide whether, as a matter of law, a reasonable [fact finder] could find that an implied contract exists.”

Ryan, 972 P.2d at 401 (quoting *Sanderson v. First Sec. Leasing Co.*, 844 P.2d 303, 306 (Utah 1992)).

“Recovery under quantum meruit presupposes that no enforceable contract exists,” and can take either of two forms. *Scheller v. Dixie Six Corp.*, 753 P.2d 971, 975 (Utah Ct.App.1988). The first is a claim for a contract implied in fact, which “is an actual contract established by conduct.” *Id.* The second, is a claim for a contract implied in law or “quasi-contract,” which is “not a contract at all, but rather an action in restitution.” *Id.* In the present case, the parties actions support the conclusion that a contract implied in fact existed between the parties and is therefore binding and enforceable. Therefore, Firkins is the legal title holder to the vehicles and Walter had no legal right to transfer title to Ruegner.

Like express contracts, contracts implied in fact “grow out of the intention of the contracting parties and in each case there must be a meeting of the minds before there can be a contract.” *Morgan v. Board of State Lands*, 549 P.2d 695, 696 n.1 (Utah 1976). However, unlike an express contract, recovery under a contract implied in fact does not necessarily require that the parties agree on the contract price. *See Davies v. Olson*, 746 P.2d 264, 267-69 (Utah Ct.App.1987) (allowing recovery under contract implied in fact where express contract claim was defeated for failure to show a meeting of the minds as to contract price).

Under the theory of implied contract in fact, Firkins and Walter had a binding contract, however the only issue that would have remained between the parties was the issue of “the amount the parties can be said to have reasonably intended as the contract price.” *Scheller v. Dixie Six Corp.*, 753 P.2d 971, 975 (Utah Ct.App.1988). In the present case, a price was agreed to, however, Firkins is unable to recall the exact amount. Firkins and Walter agreed to a price, Walter turned over possession to Firkins, Walter mailed the titles to Firkins, Firkins held legal title in Utah and in New Mexico, Firkins made cash payments to Walter and Walter never sued for breach of contract even after receiving Firkins’ letter that the balance was paid in full. Instead, Walter defrauded Firkins out of the vehicles and sold them to Reugner. Therefore, Firkins is the legal title holder and Walter had no legal standing to transfer title to Ruegner.

The case of *Lake Philgas* is remarkably different than the present case. *Lake Philgas Service v. Valley Bank & Trust Co.*, 845 P.2d 951, (Utah App. 1993). In the case of *Lake Philgas*, two parties transferred title to a mobile home before the sale was completed. *Id.* at 955. However the sale of the property was never finalized because the buyer could not qualify for financing and title was never transferred back to the seller. *Id.* at 955. Because the buyer held title, a creditor of buyer attempted to place a lien on the property. *Id.* at 955. The court found that the parties did not intend to transfer title, but instead the property was leased once

the sale fell through. *Id.* at 956. The court noted that a title holder created only a presumption of ownership. *Id.* at 956.

Unlike *Lake Philgas*, Firkins and Walters intended to transfer title. Walter did not testify or defend this action. Walter never filed an action against Firkins for breach of contract or for non payment under the terms of their agreement. Firkins made payments to Walters when demanded. Firkins held title for four years and no legal action was ever filed against him by Walters.

The court in *Lake Philgas* stated that “holding title establishes only a presumption of ownership, rebutted by legally relevant evidence presented at trial and deemed credible by the court. In an early Utah case construing predecessor statutes governing motor vehicles, the court held that transfer of title was not mandatory, but was ‘to protect innocent purchasers and third parties from fraud but was not intended to be controlling as between the parties to the transaction.’” *Lake Philgas Service v. Valley Bank & Trust Co.*, 845 P.2d 951, 957 (Utah App. 1993) (citing *Jackson v. James*, 97 Utah 41, 89 P.2d 235, 237 (1939). Title was intended to provide a “flag of warning to prospective transferees or encumbrancers.” *Id.* However, the case of *Lake Philgas* does not apply in the present case. Firkins and Walters intended to transfer title. Firkins established that he held title for four years, that Walter knew he held title in Utah and New Mexico, and Walter never

challenged Firkins status as a title holder. Firkins paid a substantial amount of money to Walter for the vehicles, relying on their oral agreement.

Therefore, Firkins held title and Walter had no legal standing to transfer title to Ruegner. Firkins and Walter had a meeting of the minds as to the terms of their agreement and Firkins acted on this oral contract.

II. There was Insufficient Evidence to Support the Trial Court's Finding that the Vehicles in Question were Worth \$100,000 at the Time of Conversion.

The District Court overvalued the vehicles that were sold twice by Walter for approximately \$50,000 in each transaction, and therefore the value of the vehicles at the time of conversion was \$50,000, not \$100,000. The determination that the vehicles were worth \$100,000 is not supported by the evidence.

To successfully challenge findings, “an appellant must first marshal all the evidence supporting the findings and then demonstrate that the evidence is legally insufficient to support the findings even in viewing it in the light most favorable to the court below.” *Reid v. Mutual of Omaha Ins. Co.*, 776 P.2d 896, 899 (Utah 1989). Therefore, the court based the determination that the vehicles were worth \$100,000 on the following facts (marshaled as follows):

Ruegner investigated buying a new catering truck, custom built to his specifications with regards to the type of ovens, the water system, the coffee system, etc. and was quoted at a price of \$200,000 to \$250,000. (Record 336;

Damages Hearing, p. 37, ll. 14-23). A new catering vehicle could range between \$200,000 to \$300,000. (Record 336; Damages Hearing, p. 41, ll. 1-5). Once the vehicles were taken by Firkins, Ruegner was not able to find a similar vehicle for sale on the market. (Record 336; Damages Hearing, p. 58, ll. 3-8). The cost of a replacement catering truck for Ruegner could be \$75,000 to \$110,000 or \$140,000, or \$200,000. (Record 336; Damages Hearing, p. 59, ll. 1- 8). Catering trucks are not readily available for purchase, and Ruegner found one catering truck for sale between April 1, 2006 and July 2008 for around \$85,000. (Record 336; Damages Hearing, p. 60, ll. 7-22). Therefore, the District Court valued the vehicles at \$100,000.

The District Court erred by applying the incorrect rule for measuring damages, and also erred in determining the amount of the award. Whether the district court applied the correct rule for measuring damages is a question of law that the court reviews for correctness. *Lysenko v. Sawaya*, 2000 UT 58, ¶¶ 17, 23, 7 P.3d 783. Whether the amount awarded by the district court was supported by the evidence is a determination of fact that may be reversed on appeal only if clearly erroneous. *Id.* at ¶ 16.

Catering trucks are unique vehicles and therefore their values are hard to determine. Reugner purchased a catering truck for \$40,000, and installed new ovens and new refrigeration for \$15,000 and was able to sell the vehicle for

\$70,000 in 2003/2004. (Record 336; Damages Hearing, p. 34, l. 2 – p. 35, l. 12).

However, the testimony presented at trial shows that catering trucks can range in price from \$40,000 to \$300,000 depending on the type of appliances and other features. However, what is lacking is a determination of something comparable to the catering truck sold to Ruegner by Walter. It is unknown what type of specifications would cause a catering truck to be valued at \$300,000 and what type of specifications would cause a catering truck to be valued at \$40,000. These figures were provided by Ruegner based on his limited experience in researching catering trucks. Also, it is unclear where the vehicles would fit within this range. Appraisals of the vehicles were not presented at trial. Also, Firkins testified that he had the vehicles for sale for awhile and no sale was completed. (Record 335; Bench Trial Transcript, p. 36, ll. 11-17). The vehicles sat in storage. Even with the vehicles on the market, Firkins was unable to sell the vehicles. Therefore, there was insufficient evidence for the District Court to find that the vehicles were valued at \$100,000. The Court should have defaulted to the actual price paid by Reugner, \$50,000.

To the extent possible, the fundamental purpose of compensatory damages is to place the party in the same position he would have occupied had the tort not been committed. *Lysenko v. Sawaya*, 2000 UT 58, ¶¶ 22, 23, 7 P.3d 783. (citing Restatement (Second) of Torts § 903 cmt. A (1979)). Generally, the measure for

damages in a conversion action is the value of the converted property at the time of conversion, plus interest. *Id.* at ¶ 18 (citing *Broadwater v. Old Republic Sur.*, 854 P.2d 527, 531 (Utah 1993)); *Madsen v. Madsen*, 72 Utah 96, 102, 269 P. 132, 134 (1928). This measure is appropriate because the remedy for conversion is analogous to a forced sale of the converted property from the plaintiff to the defendant. See 18 Am.Jur.2d Conversion § 105 (1985). To place Ruegner in the same position had the tort of conversion not occurred, he would receive the \$50,000 he gave to Walter for payment of the vehicles. Therefore, the appropriate amount of damages in the case would be \$50,000 if Firkins is not deemed to be the legal title holder of the vehicles.

III. Firkins Did Not Convert Ruegner's Property

Firkins did not convert Ruegner's property. As stated above, Firkins had a valid and enforceable contract with Walter. Firkins relied upon this oral contract by sending cash to Walter and by holding title to the vehicles for several years. Therefore, Firkins had a legal and lawful justification for taking the vehicles from Ruegner's possession. He held valid New Mexico title to the vehicles. "A conversion is an act of willful interference with a chattel, done without lawful justification by which the person entitled thereto is deprived of its use and possession." *Jones v. Salt Lake City Corp.*, 2003 UT App 355, ¶ 9, 78 P.3d 988 (internal quotation marks omitted). "Whether the trial court properly applied the

law of conversion is a legal question, which we review for correctness.” *Fibro Trust, Inc. v. Brahman Fin., Inc.*, 1999 UT 13, ¶ 19, 974 P.2d 288. Based upon the above analysis, Firkins had legal right to take the vehicles from Ruegner’s possession.

IV. Walter and Ruegner Converted Firkins’ Property

Walter and Ruegner converted Firkins property by taking the vehicles from Firkins possession and storing them on Ruegner’s father’s property. “A conversion is an act of ¶ illful interference with a chattel, done without lawful justification by which the person entitled thereto is deprived of its use and possession.” *Jones v. Salt Lake City Corp.*, 2003 UT App 355, ¶ 9, 78 P.3d 988. Walter and Ruegner had no legal justification to take the vehicles from Firkins’ possession. Firkins held title and had made several payments to Walter. As stated and argued previously, Firkins was the legal title holder to the vehicles and therefore, Walter and Ruegner had no legal authority to take the vehicles from Firkins possession.

CONCLUSION

Walter and Firkins had a binding contract for the sale and purchase of the vehicles. The contract, when formed, consisted of an offer, an acceptance, and consideration. Walter and Firkins behaved per the contract for several years.

Firkins agreed to purchase the vehicles under Walter's specific terms: the agreement was not to be in writing, Firkins was to hold title so Walter could hide assets from his ex-wife, and Firkins was to pay off the balance by the end of the Olympics. The parties then modified the agreement to extend the time to pay off the purchase price. Even though Firkins is unable to recall the purchase price, Firkins fulfilled his obligation under the contract. Firkins paid \$40,000 to \$55,000 to Walter and then stopped payments when he sent a letter to Walter stating that he paid off the balance. Walter never sued Firkins for lack of payment. Instead, Walter took the vehicles by forging Firkins signature and obtaining California titles in order to sell the vehicles to Ruegner. Ruegner and Pig Boys, Inc. do not have legal title to the vehicles. Therefore, the Court should reverse the District Court's ruling that there was no contract between Firkins and Walter and find that Firkins is the proper legal title holder and owner of the vehicles.

Dated this 16th day of December, 2008.

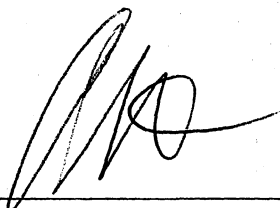
A handwritten signature in black ink, appearing to read 'Olivia D. Uitto', written over a horizontal line.

Olivia D. Uitto, Attorney for Appellant

PROOF OF SERVICE

I, the undersigned, certify that a true and correct copy of the foregoing document "Appellant's Brief" was hand delivered this 14 day of December, 2008 to the following:

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FILED DISTRICT COURT
Third Judicial District

SEP 16 2008
SALT LAKE COUNTY
By [Signature] Deputy Clerk

**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

RICK FIRKINS AND ALL STAR MOTION PICTURE CATERING, Plaintiffs, vs. PAUL RUEGNER, PIG BOYS, INC., AND ZELIG WALTER, Defendants.	FINDINGS OF FACT AND CONCLUSIONS OF LAW Civil No. 060906031 Judge GLENN K. IWASAKI
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The above-entitled matter came regularly before the Court, the Honorable Glenn K. Iwaski, presiding on July 8, 2008, for trial on the issues of liability only. The Plaintiff/Counter-Defendant, Rick Firkins and All Star Motion Picture Catering, were present and was represented by counsel, Olivia D. Uitto. The Defendants/Counter-Claimants/Cross-Claimants, Paul Ruegner and Pig Boys, Inc., appeared in person and through counsel, Stephen W. Cook. The Cross-Defendant, Zelig Walter, failed to appear and his default was entered. After having found for the Plaintiff on the issue of liability, and entering findings of fact and conclusions of law on the record regarding liability, the

matter came before the Court on August 19, 2008 for a trial on damages. The Plaintiff Rick Firkins was not present but was represented by his counsel. The Defendants were present and were represented by their counsel. After having heard all of the evidence, after having heard the arguments of counsel, and after having been fully apprised in these premises, the Court now enters its:

FINDINGS OF FACT

1. The Court finds that the Plaintiff/Counter-Defendant Rick Firkins ("Firkins") is an individual residing at 3503 E. River Park Dr., South Lake Tahoe, CA 96150. At all times material Firkins did business as a sole proprietorship under the name of All Star Motion Picture Catering.
2. The Court finds that the Defendant/Counter-Claimant/Cross-Claimant Paul Rugner ("Ruegner") is a resident of the County of Salt Lake, State of Utah. At all times herein material, Ruegner was the President of Defendant/Counter-Claimant/Cross-Claimant Pig Boys, Inc. ("Pig Boys"). At all times material Pig Boys was a Utah Corporation in good standing with its principal place of business in Salt Lake County, State of Utah.
3. The Court finds that the Defendant/Cross-Defendant Zelig Walter ("Walter") is a resident of the State of Texas residing at 120 Piper Trail, The Woodlands, TX 77381.
4. The Court finds that Walter owned a 1984 Kitchen Utility Van Trailer that was built for him by Kitchen Masters in Lubbock Texas, VIN: 1K93F3834E1044112 ("Trailer").

5. Together, the Truck and the Trailer are sometimes referred to as “the vehicles” in these findings.

6. Walter purchased a 1994 Chevrolet CJ Class Commercial Truck, VIN: 1GBJ7HIJ4RJ105593 IN 1994 (“Truck”) in 1994 in Minneapolis, Minnesota.

7. Walter owned the Truck and Trailer outright and used the Truck and Trailer in his trade of a motion picture caterer until approximately 2001.

8. Firkins was also in the motion picture catering business and had been since approximately 1986. Firkins testified that he performed motion picture catering all over the United States including Utah.

9. Ruegner and Pig Boys were also in the motion picture catering business in Utah for over 15 years.

10. In approximately November 2001, Firkins had a conversation with Walter at Walter’s home in Sherman Oaks, California. Firkins explained that he had a need for the Truck and Trailer as he had a catering contract in Utah for the feeding of TV crews filming the Olympics. Firkins explained that he anticipated receiving a large profit from the contract following the Olympics that were to be held in late January and early February, 2002. At that time, Firkins and Walter entered into negotiations for the sale of the vehicles. The Court is not convinced that Firkins and Walter ever came to an enforceable agreement during these negotiations. Testimony was enlightening in that it appears that Walter was in divorce proceedings in California and may have been attempting to secret his assets as much as possible. Nothing regarding this transaction was in writing. The terms of any contract, if any there were, are in question by the Court.

The Court is not convinced that there was an actual purchase price. And, as to the terms, the testimony of Firkins was that he could not recollect the length of a contract, when any sums were to be repaid, what was to occur in case of default, forfeiture, or penalties of any kind for non-compliance with the terms. In short, the Court finds that there was no enforceable contract pursuant to the November, 2001 negotiations. The Court finds that there was no purchase price, no duration terms, no default or forfeiture provisions for non-compliance. And, regardless of whether or not there was an enforceable contract, it is unquestioned by the testimony of Firkins that he did not fulfill the terms and conditions of any contract.

11. The Court finds that Firkins transported the vehicles to Salt Lake City, Utah and used the vehicles to perform his motion picture catering contract at the Olympics. He operated his business from 4795 N. Highway 40, Heber City, Utah 84032.

12. The Court finds that, following the Olympics, Firkins transported the Truck and the Trailer to a storage facility in Sun Valley, California, known as the "Desmond Brothers"

13. Firkins testified that Desmond had the vehicles transported to another facility, Archer, where Walter paid the impound fees, and transferred the vehicles to For Star, another storage facility, for a period of time and then ultimately to a storage facility called SC Storage in Santa Clarita California.

14. In November, 2004, Walter and Firkins met again at Walter's house and entered into other negotiations regarding the sale of the vehicles whereby Firkins once again obtained possession of the vehicles. The Court questions these negotiations. Were

the negotiations for a modification of the first arrangement between Firkins and Walter or, no modification at all, or a new contract? The Court finds that one cannot modify a contract that never existed, or enforce a previously existing non-enforceable agreement, as the Court has found above. Even if these negotiations led to a new contract, which the Court does not find, or finds that it was a modification of a previously existing contract, which the Court also does not find, the undisputed testimony of Firkins and his Exhibit P-9 show that he failed to pay for the vehicles even assuming Firkins' testimony concerning what the purchase price was to be, even after the November, 2004 negotiations. Here, again, there was insufficient evidence to the Court's satisfaction as to what the purchase price was to be. As to these negotiations, it was Firkin's testimony that the purchase price would be the balance of what was left. But, what was that amount? Mr. Firkins testified, in referring to Walter's view, that "It was whatever he said on a given day." As to Mr. Firkin's own view, it was "fifty-esh", or again, an "estimate", but again there was no purchase price to apply the payments Mr. Firkin's allegedly made. Mr. Firkin's payments could have been rent payments for the vehicles. The Court finds that essential terms of an enforceable contract, such as purchase price, were not established by the evidence. Even if the purchase price was established by the evidence, such as being "fifty-esh", it is undisputed that Mr. Firkins failed to pay the purchase price of the vehicles.

15. The Court finds that, because of a lack of contract between Firkins and Walter, or because Mr. Firkins did not fully perform under the contract, if one existed, Mr. Firkins had no legal right to the vehicles. Mr. Firkins may have had an equitable

claim in his own mind due to the fact of the transactions and course of business between he and Walter, but the long and short of it to the Court is that he had no legal or equitable right to the vehicles because there was no enforceable contract and, even if one existed, Mr. Firkins failed to fulfill the contract and defaulted on his legal right to the vehicles.

16. The Court contrasts the negotiations above between Firkins and Walter to those of the Defendants and Walter. Walter negotiated with Pig Boys for the sale of the vehicles. Pig Boys agreed to purchase the vehicles for the total sum of \$50,000.00 cash but insisted that Pig Boys be provided transferable titles evidencing ownership of the vehicles. Mr. Ruegner questioned Firkins name and signature on the titles that were initially presented to him and rejected the transaction. Only when Walter went back to California and obtained clean California titles did the Defendants continue to consider the transaction. Even after Walter presented the Defendants with clean California titles, the Defendants would not conclude the transaction until Utah's DMV accepted the California titles, re-issued Utah titles, and gave its blessing to the ownership of the vehicles. After the above occurred, on February 13, 2006, Walter sold the Truck and the Trailer to Pig Boys pursuant to a written Bill of Sale. And, at the same time, Walter executed a written receipt of the purchase price.

17. The Court finds that Pig Boys took possession of the Truck and Trailer on or about February 13, 2006.

18. While Walter was negotiating with the Defendants, Firkins left messages on the telephone of Ruegner, but Firkins never spoke personally to him. The messages were threatening and indicated that this was none of his business and should stay out of

it, the implication being that Firkins had a claim to the vehicles. The Court finds that, while that may have put someone on notice of a dispute, it does not, in and of itself, cause one to have a responsibility to resolve disputes of ownership, particularly where the Defendants subsequently relied upon clean California titles, clean Utah titles, a written bill of sale, and a receipt.

19. Based upon the foregoing, the Court does not find that the Defendants were necessarily a bona fide purchaser in good faith. However, the Court does find that the Defendants did what a prudent person would have done based upon the circumstances presented. The Defendants refused to conclude the transaction with Walter twice and only agreed to conclude the transaction after being presented with clean California titles, clean Utah titles, and the blessing of Utah's DMV.

20. Firkins subsequently located the Truck and Trailer in a lot under the control of Pig Boys. The Court finds that Firkins intentionally took possession of the Truck and Trailer without the permission, express or implied, from Pig Boys on or about April 1, 2006. The Court finds that Firkins had no legal or equitable right to the possession of the Truck and Trailer. Firkins has had possession of the Truck and Trailer from April 1, 2006 to the present.

21. The Court finds that the Plaintiff did not engage in bad faith in obtaining possession of the vehicles or in bringing this lawsuit. The reason is because the Court finds that, while Firkins had no actual legal or equitable title to the vehicles, the Court provides Firkins the benefit of the doubt that he held a belief in his mind that he had an equitable claim to the vehicles. As to whether or not this lawsuit was brought in bad faith

under Section 78-27-56 U.C.A. (1953), as amended, the Court finds that it is well within the realm of lawsuits and those which involve quieting title to property. Therefore, the Court will not award punitive damages or attorney's fees based upon the good-faith, bad-faith, analysis.

22. The Court finds that, by a clear and convincing evidence standard, the parties were not fraudulent in their dealings with each other. While the Plaintiff references Ruegner's contact with Ted Miller, it was apparent to the Court that the contact was Pig Boy's making of a check to the California DMV and, while Mr. Miller may have had a telephonic contact with Ruegner regarding the mailing of the check, it is a leap to conclude there was any fraudulent activity as to the specifics of Walter's application for California titles, due to the testimony of Ruegner having no knowledge at all of the California procedures, its forms, or what he was doing other than the writing of a check. Therefore, the Court finds that this is a non-issue even though it was raised by the Plaintiff. The Court further finds that, if anyone is considered to be at fault, in terms of fraudulent means, it would have been Walter in his dealings with Firkins and Walter's default has been entered.

23. The Court finds and concludes that the vehicles were unique and that they were income producing. The Court finds and concludes that the value of the vehicles at the point of conversion by the Plaintiffs was \$100,000.00 exclusive of loss of income or revenue. The Court finds and concludes that the Defendants should be granted a judgment against the Plaintiffs for the conversion of the vehicles by the Plaintiffs in the amount of \$100,000.00.

24. The Court finds and concludes that the Plaintiffs also converted the goods and items located in the vehicles and the Defendant Pig Boys is entitled to a judgment against the Plaintiffs in the amount of \$25,655.64.

25. The Defendant had the burden of persuasion regarding its claim of loss of income or revenue as a result of the conversion by the Plaintiffs.

26. The Court was not convinced and persuaded by the testimony of Vickie Dean, an expert witness called by the Defendants. In this regard, the Court was not convinced that Ms. Dean's approach was the best approach or most logical. The Court takes issue with her methodology, her assumptions, and concludes that her method and figures are not the accurate figure regarding loss of revenue or loss of income resulting from the conversion. Therefore, the Court denies any claim regarding loss of income or revenue resulting from the conversion.

27. The Court is convinced, however, that the Defendants are entitled to pre-judgment interest on the conversion of the vehicles, goods and items, or \$125,655.64.00 from the date of their taking on April 1, 2006 to the time of judgment. The Court finds that the Defendants are also entitled to post judgment interest from the time of judgment until the judgment is satisfied.

CONCLUSIONS OF LAW

1. The Court concludes that no enforceable contract existed between Firkins and Walter as a result of the November 2001 negotiations between them for the sale of the vehicles; and, even if one existed, Firkins defaulted under its terms.

2. The Court concludes that no enforceable contract existed between Firkins and Walter as a result of the November 2004 negotiations between them for the sale of the vehicles, whether the negotiations are considered to be a continuation or modification of the November 2001 negotiations or a new contract; and, even if such existed, Firkins defaulted under the terms of such.

3. The Court concludes that Walter had legal and equitable title to the vehicles when he sold the vehicles to Defendants.

4. The Court concludes that the Defendants have legal and equitable title to the vehicles and they are the prevailing parties.

5. The Court concludes that Firkins illegally and wrongfully converted to his own use the Truck and Trailer, including the contents, on April 1, 2006, depriving Pig Boys of its lawful exclusive use and possession of them.

6. The Court has scheduled a trial for August 19, 2008, to determine Defendants' damages; however, the Defendants are not entitled to claim punitive damages or attorney's fees.

7. Defendant Pig Boys is entitled to a judgment against the Plaintiffs in the principal amount of \$125,655.64. Defendant Pig Boys is also entitled to prejudgment interest on said amount at the rate of 10% per annum until the date of judgment and post judgment interest thereon thereafter until the judgment is satisfied.

8. Defendants are entitled to their costs.

CERTIFICATE OF SERVICE

STEPHEN W. COOK hereby declares that he is the attorney for the Defendants herein; and that he served the attached FINDINGS OF FACT AND CONCLUSIONS OF LAW upon:

Olivia D. Uitto
2686 East Manor Drive
Cottonwood Heights, UT

Zelig Walter
120 Piper Trail
The Woodlands, TX 77381

by placing a true and correct copy thereof in an envelope and depositing the same, sealed, with first-class postage prepaid thereon, in the United States mail in Salt Lake City, Utah on Friday, August 29, 2008.

Executed on Friday, August 29, 2008.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.


STEPHEN W. COOK

1 of, he is not in possession and he wishes the return of the--
2 of the vehicles?

3 MR. COOK: That is correct, even with his second
4 amended complaint, as I recall.

5 THE COURT: All right.

6 MR. COOK: So--

7 THE COURT: And--and to be candid, I haven't, and I
8 appreciate you bringing that to my attention.

9 MR. COOK: I don't want to misspeak and I do have
10 the second amended complaint with me.

11 Paragraph 13 says, On information and belief, the
12 defendants' unlawfully took possession of the catering truck
13 and Chevy truck.

14 So, the continued representations. So, I'm troubled
15 by that as well.

16 THE COURT: Well, it says that they took possession
17 of the truck and the trailer, it didn't say when and it
18 doesn't mention that he still in--still has possession of it.

19 If that's the only statement that you're relying
20 upon, then I think that's equivocal, so...

21 MR. COOK: It is.

22 THE COURT: Okay.

23 MR. COOK: So, I concede that.

24 THE COURT: Thank you.

25 MR. COOK: Nevertheless, that's how I read it as

1 And as to the terms, it seems to be again, only on
2 oral testimony and not supportive and not recollected entirely
3 by Mr. Firkins as to the length of the contract, when it is to
4 be repaid, when the terms of repayment to be, what's to occur
5 in the event of forfeiture, what--what--any penalties or
6 anything else like that for non-compliance with the terms.

7 The long and short of it is, the Court finds that
8 there was no contract pursuant to the November, 2001,
9 negotiations between Firkins and Zelig Walters. There is no
10 purchase price, there is no duration terms, there is no
11 forfeiture provisions and regardless of--and--and if there was
12 a contract, it's unquestioned that pursuant to the testimony,
13 admitted testimony of Mr. Firkins, that based upon what he has
14 presented to the Court today, he has not fulfilled the terms
15 and conditions of a contract in which the Court finds there's
16 no contract anyway. That takes care of the November, 2001,
17 negotiations.

18 Then I move to--as Mr.--and I've used this in my
19 notes, as Mr. Firkins has indicated, another arrangement was
20 entered into. That was entered into in the fall of 2004.
21 What was the "another arrangement?" Was it a modification of
22 the first contract, which the Court finds there is none, so if
23 there was a modification of a contract that never existed,
24 there was no modification at all or was it a new contract?

25 Even if it was a new contract, which the Court does

1 well, because it was a continuation of what was set forth in
2 the amended--in the first complaint.

3 Based upon all of that, your Honor, I think the
4 evidence is very clear and persuasive that Mr. Zelig Walter
5 had the right to have the titles put in his name and my client
6 had the right to consummate the transaction.

7 THE COURT: Did anybody do an affirmative defense of
8 statute of frauds on this matter?

9 No? All right.

10 Thank you very much for the for the closing.

11 My analysis is a little bit different than

12 Counsel's. I first looked at this matter and--and tried to
13 determine whether or not there was even a contract between
14 Zelig Walter and Mr. Firkins back in November of 2001.

15 The testimony was enlightening in that this appeared
16 to be a deal in which Mr. Walter was secreting assets from a
17 divorce estate and wanted to keep it under the radar as much
18 as possible; and that's my terms, but then that's the
19 implication I got from the testimony of Mr. Firkins.

20 Accordingly, nothing was in writing. The terms of
21 the contract, if there any was--if there was any, are--are in
22 question and nebulous. There is no mention--there--the--the
23 Court is not convinced that there was even an actual purchase
24 price that was agreed upon, rather than a fifty-ish, sixty-
25 ish, that is speculative, there is no purchase price.

1 not find and finds that it was a modification of a non-
2 existing contract, the payments in P-9 to support his payments
3 there, admittedly, again, were after the fact of the November,
4 2004, agreement. Again, there is no--there is no purchase
5 price to the Court's satisfaction, of what he is paying to.

6 As to the negotiations, it was Mr. Firkins'
7 testimony that the purchase price would be the balance of what
8 was left. Well, what is that amount? Mr. Firkins would refer
9 to Mr. Walter--Zelig Walter and say, it's whatever he said on
10 a particular day. As to his own opinion, it was fifty-ish,
11 again, or--or an estimate; again, there is no purchase price
12 to apply these payments for.

13 The payments, for want of a better word, could be
14 utilized as rent on the property and on the--on all the
15 vehicles, but it is lacking one specific term, that is, what
16 was the purchase price and that has not been determined to the
17 Court's satisfaction.

18 So, with that, the Court finds that Mr. Firkins,
19 because of a lack of contract, and if there was a contract,
20 did not fulfill the terms of the contract, had no right, legal
21 right, to the property. He may have had an equitable right in
22 his own mind, due to the fact of the transactions and--and the
23 course of business between Zelig Walter and Firkins.

24 And I say that, and I'll return to that, because
25 it's relevant to another point that I'm making. But the long

1 and short of it, in the Court's estimation, is, there was no
2 contract, if there was a contract. it wasn't fulfilled;
3 therefore, Mr. Firkins had defaulted on any of his rights and-
4 -legal rights and obligations as to the truck and kitchen.

5 Contrast that to the actions taken by Mr. Ruegner.

6 In the exhibits, I've got a bill of sale, I've got a receipt,
7 I've got title, and a lot was made by Ms. Uitto as to whether
8 or not, and the implication was that Mr. Ruegner closed his
9 eyes to everything and just took a blind stand. I don't find
10 that he's a B.F.P.(?); on the other hand, I believe that he ha
11 done what a prudent person may have done facing these
12 circumstances.

13 I think most revealing is that he, twice, hesitated
14 to go through the deal, number one, because of the questioning
15 as to Firkins' name and signature on the titles, and number
16 two, again refusing when Walter brings back the California
17 titles until and unless Utah, I guess, gives its blessing.
18 And that's what he waited for. And Utah did, in fact, re-
19 issue titles.

20 As to being on notice of claims of others.
21 Undoubtedly, there have been--there were messages, he never
22 spoke personally with Firkins, and the messages were
23 threatening and indicating that this is none of his business
24 and that he--he--he should stay out of it. The implication
25 being that Firkins has a right to it.

1 to be involved, based upon a clear and convincing standard and
2 that standard has not been borne by either side, as to being
3 fraudulent in their dealings with each other; one again, the
4 Court finds that if anybody is at fault in a fraudulent means,
5 it would have been Zelig Walters and he has been defaulted and
6 his absence is noted.

7 Okay. I did the bad faith, I did the fraud finding.

8 So, the only thing left would be as to damages and how long do
9 you think that hearing would take?

10 MR COOK: Half a day is my guess, three-quarters at
11 most.

12 THE COURT: So, I'm assuming your range of damages,
13 as I'm just speculating, would be purchase price, damages as
14 to inventory, loss of the benefit of the repairs, any business
15 opportunity lost that he may have had since April of 2006 to
16 the present time. You're not asking for a return of the
17 vehicles in question?

18 MR. COOK: No.

19 THE COURT: That can stay with Mr. Firkins, but your
20 evidence of damages will be those--those areas; is that
21 correct?

22 MR. COOK: That's correct, your Honor.

23 THE COURT: Very well.

24 So, how soon do you all want to do this?

25 When can your witness be available?

1 Well, while that may put somebody on notice that
2 there is a dispute, that does not in and of itself, mean that-
3 -that he has a responsibility, indeed, to search that out. He
4 relied upon the clean California title, he relied upon clean
5 Utah titles and he relied upon a bill of sale and a receipt,
6 indicating that that's what he paid.

7 Contrasted that to Firkins, at least we have a
8 price, we have a payment of a price, we have a receipt of the
9 payment and the other evidencing documents; therefore, the
10 Court finds that legal title in this matter is with Mr.
11 Ruegner and Pig Boys and they are the prevailing party as to
12 this issue.

13 The Court further finds that as to bad faith in the
14 lawsuit, that is one of the relief requested and sanctions
15 requested by the defendant, I'm going to give Mr. Firkins the
16 benefit of the doubt and indicate that in my opinion, the
17 person who is at the core of any fraud or any subterfuge or
18 anything else is neither of these parties, but Zelig Walter.

19 As to whether or not this is--and--and in bad faith,
20 again, I think that it is well within the realm of lawsuits to
21 utilize this sort of as a quiet title to the property and I--I
22 don't fault and I don't sanction the plaintiff for filing this
23 lawsuit and so I am not going to give any relief as to that
24 requested remedy.

25 Second of all, the Court does not find either party

1 MR. COOK: I apologize to the Court one more time.
2 This Friday, I leave for my annual fishing trip in Alaska for
3 ten days.

4 THE COURT: Well, I don't want to--

5 MR. COOK: It's been--

6 THE COURT: --I don't want to do it that soon.

7 THE CLERK: We're looking at like August.

8 THE COURT: August what?

9 THE CLERK: We can do August 12th.

10 THE COURT: August 12th. Is that available on
11 calendars?

12 MR. RUEGNER: I'll be out of town.

13 THE COURT: Mr. Ruegner seems to have a problem, Mr.
14 Cook.

15 MR. COOK: I know I have a matter in Denver through
16 the--is the 12th a Monday? I get back Sunday.

17 THE CLERK: It's a Tuesday.

18 THE COURT: August 12th, a Tuesday.

19 MR. COOK: I think that's just way too close for me,
20 'cause I'm out of town immediately preceding that, so...

21 THE COURT: Okay. And Mr. Ruegner apparently had a
22 conflict, too, so...

23 MR. RUEGNER: I'll be out of town until the 14th.

24 THE COURT: All right.

25 MR. RUEGNER: I'll be back in town on the 13th and

rice was some 55,000, 50,000 for these two vehicles, plus ,000 for a Suburban truck or van that Mr. Firkins purchased t the same time.

Undisputed that the titles were not provided to Mr. irkins at that time. It's also undisputed that Mr. Firkins id not pay the total purchase price.

The evidence shows that Mr. Firkins came back to tah, filed what we call false reports with the D.M.V. to btain duplicate titles to these two vehicles, then took them o New Mexico and based upon the Utah titles, had them titled n New Mexico. Again, it's undisputed that the purchase price as not paid.

In any event, Mr. Zelig Walter contacted the police-- first of all, attempted to contact Mr. Firkins, wouldn't eturn his telephone calls, wouldn't give him the location of he vehicles, so he contacted both--the police both in New exico and in Utah reporting them as stolen. Also contacted he D.M.V., reported them as stolen and it's at this point in ime where my client connects then to Mr. Zelig Walter and hat kind of pieces together the two stories.

We--we contend that Mr. Firkins wrongfully converted he property to himself on April 1st, that we're entitled to a udgment against him for the value of the vehicles.

We also contend we're entitled to a judgment for the e-stocking of the kitchen and the re-conditioning costs that

outlined earlier.

We're also claiming a loss of--loss of business as a esult of the wrongful conversion of these vehicles. We think hat the actions of Mr. Firkins was done intentionally. He new what he was doing when he falsely signed these documents ith the Utah D.M.V. We contend that we're entitled to unitive damages.

We believe that he engaged in self-help measures hen he came and obtained these vehicles on April 1st, when he ew at that time he did not have--could not--did not have--did ot pay the full purchase price, did not have valid titles and ook this--this action. Accordingly, we also believe we're ntitled to an award of attorney's fees under Utah's bad faith tatute.

Thank you.

THE COURT: Thank you, Mr. Cook.

Ms. Uitto, your first witness.

MS. UITTO: Your Honor, I'd call Rick Firkins.

THE COURT: Mr. Firkins, come and present yourself efore my clerk, raise your right hand and receive the oath, lease.

RICHARD WILLIAM FIRKINS, he plaintiff in this matter, called as a witness, after aving been first duly sworn, assumed the witness stand and as examined and testified in his own behalf as follows:

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DIRECT EXAMINATION

BY MS. UITTO:

Q Good morning. Can you state your name for the record, please?

A Richard William Firkins.

Q Okay. And Mr. Firkins, what is your address?

A 3503 East River Park Drive, South Lake Tahoe, California 96150.

Q Okay. And Mr. Firkins, what is your occupation?

A Location caterer for film companies, All Star Motion Picture Catering.

Q Okay. And what is the name of your business?

A All-Star Motion Picture Catering.

Q And what is the nature of the business?

A Feeding film crews on location, variety of venues and sets and states.

Q Okay. And how long have you been in business?

A Since 1986.

Q Okay. And what is your experience in catering, especially to re-location or doing catering on location?

A My experience?

Q Yeah.

A Vast. Just, you know, it's--

Q Okay.

A Probably done, you know, well into the hundreds as far as productions, film productions. Various T.V. shows and commercials and film shoots and you know, of--of every kind.

Q Okay. And how do you get these jobs, to go out and cater to these commercials and to film crews?

A Initially, it's usually a bidding process or a--a contact is made through, you know, through telephone, through inquiries, through inter--you know, for my web site or something like that, but a lot of times, it's mostly--it's mostly word of mouth and--and repeat customers.

Q Okay. And what type of equipment do you use?

A Anything you'd find in a restaurant; everything from--you know, the mobile kitchens that we're discussing today. I'm trying to--you know, transfer boxes, moving food from a kitchen to a--to a site that it's going to be consumed.

Q Okay. And do you have periods of down time in the year?

A Oh, sure, yeah.

Q Is it hard to predict how many jobs you're going to have in a year?

A Virtually impossible.

Q Okay. So, now, I want to draw your attention to the first time, the first transaction or the first deal that you ever had with the gentleman of Zelig--the gentleman named Zelig Walter.

1 A Uh huh (affirmative).

2 Q First of all, can you just describe the background
3 between you and Mr. Walter?

4 A I actually worked for Wally, which is his given--or
5 his name, Wally-Walter. Worked for him back in the early
6 '80's, you know, for like maybe six-nine months, something
7 like that. I've known him since the late '70's--I've known of
8 him since the late '70's, he's been around the business, you
9 know, of one level or another, and I think he went into
10 business probably early '80's, is when he first went in,
11 himself.

Anyway, like I said, I worked for him briefly, I'd been
working for another caterer and I came out, actually during
the job out in Phoenix, Arizona, and I was on a return trip
from Florida and stopped in and helped him out for a week on a
show that he was--actually one of his first shows. So, it was
a friendly relationship, I was--you know, we--we became
friends early on.

Q Okay. And now, the first vehicle that you ever
purchased from Mr. Walter, or Wally, can you describe what
that first purchase was?

A First vehicle--actually, I doubt if I've even told
you this, but the first vehicle I ever bought from him was a
van; but that's irrelevant.

Q Okay.

A The first vehicle that's pertinent to this situation
is a--what was it, it was a cube van, a refrigerated cube van
that I needed for a--as a support vehicle for another--another
refrigerated truck I had.

Q Okay. And what was the nature of that deal?

A Just a cash deal; I gave him ten grand, he gave me
pink slips and away I went, after I changed the battery.

Q Okay. So, there was nothing put in writing at that
time?

A No. Just, he signed the pink slips over and I left.

Q And now, drawing your attention to the first kind of
transaction between the two of you which is at issue in this
case, can you describe what vehicles you purchased and the
nature of that deal?

THE COURT: Start out with the--give me a time
frame, please.

MS. UITTO: Okay.

This would be in approximately November of 2001.

THE WITNESS: At that time, he was in desperate
need of selling out everything he had, and what he had left
was very--just a--various, a sundry grouping of--of
restaurant equipment. There was a couple of trailer barbecue
units, you know, homemade barbecue pits and of course, the
refrigerated truck and trailer at that time.

And let's see, what were you--I'm sorry, the

1 question, again, was?

2 Q (By Ms. Uitto) In November of 2001, what type of
3 things did you purchase or what were the items--

4 A Yeah. And--yeah, it was just kind of a lump sum
5 thing. He had this--he had this little warehouse out in
6 Burbank that he was paying rent on, he had to get rid of
7 everything, it was like a fire sale. And he just needed cash
8 as quickly as possible, he was going through a divorce at the
9 time and so anyway, the--the--everything that was included,
10 the inventory was--the--the tractor, the trailer that we were
11 referring to today.

12 Q Okay.

13 A Lots of different restaurant equipment; I mean,
14 racks and pots and pans and coffee machines, every--you just
15 name it, it just like a--going to a--an auction.

16 Q Okay.

17 A So, anyway...

18 Q Okay. And why did you need to purchase or why--what
19 was your reason for you to purchase these--the two vehicles at
20 issue in the case and then the inventory?

21 A Well, I didn't need anything else other than the
22 two--the--the tractor and the trailer. The only reason I
23 needed them is because I pretty much--I had--all the equipment
24 that I had was already accounted for as far as doing the
25 Olympics; that's what this was all about was building up an

1 equipment load for the Olympics. And I had several vehicles
2 on lease, several that I owned and this was just one more to
3 add to the fleet, so to speak.

4 And the only reason I even considered it was because
5 of past friendship that I had with Wally, knowledge of the
6 vehicle, only in that it was--I had worked on it before, so I
7 knew it, so when I went to--you know, to use it, it--it was
8 obviously in a serious state of disrepair, it had been sitting
9 for over two years--

10 Q Okay.

11 A --at that point. And so it was going to require a
12 substantial amount of investment on my part, just to make it
13 road-worthy.

14 Q Okay. So, when this transaction went down, where
15 was this--where was--

16 A In Burbank.

17 Q In Burbank, California?

18 A Yeah.

19 Q And when, approximately, was this transaction?

20 A About November of '01.

21 Q Okay. And can you explain the initial meeting, what
22 happened, what was the conversation between you and Mr.--

23 A Oh, he had a little office there on the side of the
24 building and I--I don't recall how he contacted--I--somebody
25 told me. There was somebody that was sharing space at--at the

yard, said that--that Wally was probably going to be selling all of his stuff and I hadn't talked to Wally in probably ten years, at that point. And I contacted him through an intermediary.

Actually, I do remember now, it was through a--a catering manufacturing company, said that they heard that he was trying to sell stuff.

And he was a bit all over the board as far as a purchase price, and there--we'll be into that, I'm sure, at some point.

Q Uh huh (affirmative).

A But at that time, it seemed pretty high what he was asking for it, so I said, well, when you feel real about it, call me back.

And he did call me back and at that point, it seemed like it's--I don't know if you're even ready for these answers to questions--

Q Yeah.

A --that aren't asked yet; but--

Q Uh huh (affirmative).

MR. COOK: Could--could we go by--

THE COURT: Yeah. Let's proceed by question and answer.

THE WITNESS: Okay.

Q (By Ms. Uitto) All right. So, when you went to go,

after the second conversation with him, that you were ready to kind of discuss a purchase price or this inventory that's in the storage warehouse, what was, to your recollection, the purchase price?

A It--it was--gosh, it seemed like it was around sixty, something like that. Somewhere around sixty thousand, you know, fifty, sixty, somewhere in there, I don't remember now, exactly, but it was in that vicinity.

If he--when he first started, you know, with the--with the pricing, it was up like, geez, it was like 150,000 or something for everything, but it wasn't--you know, there wasn't anything in there that could have even come close to commanding that price.

Q Okay. And so what was the terms of this arrangement? Was there a--anything put into writing?

A No.

Q Okay. And why was this contract, or this deal, not put into writing?

A He was very specific about his needs, to keep everything completely off the books and--for a couple of reasons; one is, he didn't even have a bank account; the other is that his ex-wife at the time, was pursuing him quite vigorously for child support and for community property assets. And that was a real big deal; in fact, he--he--I couldn't even give him, at the time, I couldn't even give him

a cashier's check. So--he just wanted cash and that was it.

Q Okay. So, when you showed up to take possession of these items, what type of monetary amount did you turn over to him?

A I handed him a \$10,000 envelope with ten \$100 bills--or excuse me, a hundred \$100 bills.

Q Okay. So, \$10,000 in cash?

A \$10,000, yeah.

Q Okay. And what did Mr. Walter give you in return?

A Well, at the time, all he gave me--well, he didn't give me anything, you know, because they had to go to a shop before it could go on the road, and then we got a--what was called a one-way trip permit and I had to get that and that was--I think he gave--you know, I don't--I don't remember how I got--got that, how that came about, what that transaction--I knew I had to get a trip permit, that was just to make it legal to take it to take it up to Utah to work; but it had to go to a shop, it was in a shop for probably three weeks, at least, just to get it legal.

Q Okay. And what were the terms of this deal? What was the length of the loan? When were you supposed to pay Wally back?

A The original deal was to be paid off by the end of the Olympics.

Q So--

A Or at the end of the Olympics, which would have been March, approximately, by the time everything was all wrapped up. And of course, that did not occur.

Q And so within six, seven months, you were supposed to pay off--

A Yes.

MR. COOK: Objection. It's leading. I think he answered the question--

THE COURT: I think she was just affirming the answer.

MS. UITTO: Yeah.

THE COURT: So, noted, but overruled.

MS. UITTO: Okay.

Q (By Ms. Uitto) So, you--you testified that you--you paid \$10,000 cash. Were there any other payments made to Mr. Walter during that--

A There was another \$7,000 payment made in. it would have had to have been, I think January, just prior to the actual Olympics picking up, starting. And--or the games actually beginning, and then that--let's see, I think there--I think there was one more some place between January and March. And then at the end of that, the--the truck was here, stayed in Utah at that time, it was still here, by--at a property up in Heber City that I kept it at.

Q Okay. Now, when you took possession of--of these

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1 vehicles and the inventory that was in the storage unit, what
2 was the condition when you took possession of these vehicles?
3 What condition were they in?
4 A Oh, severe disrepair. It was--they were--they
5 wouldn't even--I mean, the--the tractor wouldn't start, there
6 was nothing operational in the kitchen itself, all the wheels
7 and tires--all the wheels were completely worthless, the--
8 nothing would hold air; I mean, I could go on and on and on
9 about that.
10 Q What type of repairs were made in California before
11 you transported them to Utah?
12 A All--I had to replace all the tires, I had to--had
13 the generator that had to be, not rebuilt, but certainly re-
14 manufactured, let's put it that way. I don't know what you
15 would call it, serviced, you know, high end service.
16 I had to have a D.O.T. certification, I had to get--
17 obviously, it hadn't been registered in two years, so all
18 those items--the registration aspect of it actually moved
19 forward and to--you know, with the trip permit, I was able to
20 put that off until we got here to Utah, but before I could
21 leave Utah, then it all had to be done.
22 Q Okay. So, after you obtained the trip permit, you
23 brought the vehicles to Utah?
24 A Yes. To work on the Olympics.
25 Q Okay. And when did you start the titling process in

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1 MS. UITTO: --in--that we're going to be admitting
2 into evidence.
3 THE COURT: Very well. Thank you.
4 MS. UITTO: Okay.
5 THE COURT: And the way that I would do this, Janet,
6 let's start hers with P-1 through whatever.
7 THE CLERK: Okay.
8 THE COURT: Mr. Cook has done his and his table of
9 contents lists his exhibits 1 through 50 and so we don't have
10 to re-number those, let's begin those with Defense 1 through
11 50.
12 THE CLERK: Okay.
13 THE COURT: Okay?
14 THE CLERK: That's fine, your Honor.
15 THE COURT: So, then we'll have P-designation and D-
16 designation.
17 THE CLERK: Okay. Okay.
18 Q (By Ms. Uitto) All right. So, Mr. Firkins, I just
19 handed you a document that is marked as Plaintiff's Exhibit 1.
20 Do you recognize this document?
21 A Uh huh (affirmative).
22 Q Okay. And can you explain or kind of describe this
23 document?
24 A Well, it's just nothing than a ap--an application
25 to--to have a Utah title applied to kitchen trailer part of

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1 the State of Utah?
2 A I think around April of '02.
3 Q Okay. And how did you get the necessary
4 documentations to--
5 A Wally mailed me the pink slips.
6 Q Okay.
7 A Or the--the certificates of title. Actually, one--
8 and one of them was from California, I think the other one was
9 Michigan or something like that, if I remember right.
10 Q Okay.
11 A 'Cause he hadn't--like I said, he hadn't registered
12 the darn in ages--for ages.
13 Q Okay.
14 MS. UITTO: Your Honor, may I approach? I have a
15 copy of each document for you, so that as we go through--
16 THE COURT: Yes.
17 MS. UITTO: --these, these exhibits, and each
18 exhibit is separated from a different piece of colored paper.
19 THE COURT: Thank you.
20 And both counsel have leave to approach witnesses
21 without further permission of the Court.
22 Now, have these already been marked?
23 MS. UITTO: Oh. I haven't marked those. I was
24 going to mark the ones that were--
25 THE COURT: Oh. Okay.

Page 2

1 this transaction.
2 Q Okay. So, this--this application for title was for
3 the utility trailer of the kitchen?
4 A Uh huh (affirmative).
5 Q Okay. And is that your signature down there at the
6 bottom?
7 A Yes. It is.
8 Q And do you--is the date--can you read the date to
9 the Court?
10 A 4--looks like it says 24-02.
11 Q Okay. And do you remember filling out this
12 application?
13 A Not exactly, but I'm--I must have.
14 Q Okay.
15 A I honestly don't remember that moment, no
16 Q Okay.
17 A I--I remember where it was.
18 Q Okay. One more to go over and then I'll admit--mov
19 to admit these.
20 THE COURT: All right.
21 Q (By Ms. Uitto) I'm handing you another document
22 that's marked as Plaintiff's Exhibit 2. And can you describ
23 what this document is, please?
24 A This would be for the tractor portion of the
25 catering truck.

1 Q Okay. And this was an application for original
2 title?
3 A Exactly. It's the same as the first.
4 Q Okay.
5 A Only to--
6 Q And is that your signature down at the bottom?
7 A Yes. It is.
8 Q And what is the date of the document?
9 A 04-24-02.
10 Q Okay. And on either one of these documents, is
11 there any information about a lienholder?
12 A No.
13 Q Okay.
14 A There was none.
15 Q Okay. Did Mr. Walter ever apply to be a lienholder?
16 A No. He did not.
17 MS. UITTO: Your Honor, I'd move for admission of
18 Exhibits--Plaintiff's Exhibits 1 and 2.
19 THE COURT: Any objections?
20 MR. COOK: No objection, your Honor. I would just
21 note for the record there's additional documents that would go
22 through this--for this process that have not been admitted.
23 THE COURT: And I'll receive those as they come in.
24 Thank you.
25 1 and 2 are received.

1 handed you, I think it was Exhibit 3, it's--it's--the mark--
2 the check is--the box is marked, issued a title free of liens;
3 correct?
4 A Yes. It is.
5 Q Okay. And on the second one, I believe it's
6 Plaintiff's Exhibit 4, there--there is some writing down at
7 the bottom and we will be going over that in a second, so I'll
8 just have you hang onto those--those documents.
9 Are these true and accurate copies of the documents
10 that you received back in 2002?
11 A Yes, except for the writing on the bottom of the
12 right--of the Exhibit 4.
13 Q Okay. So, that writing was not on there before?
14 A No.
15 Q Okay.
16 MS. UITTO: Your Honor, we would move to admit
17 Exhibits 3 and 4.
18 MR. COOK: No objection.
19 THE COURT: 3 and 4 are received.
20 Q (By Ms. Uitto) Okay. I'm going to have you hang
21 onto those just in--just for right now. Okay. So, while
22 you're in Utah and you received these titles, what happened to
23 the vehicles then? What happened after the Olympics
24 concluded?
25 A Well, the vehicles sat here for a couple months--

1 MS. UITTO: Would you--your Honor, would you like me
2 to leave these here or hand them to your clerk at this time?
3 THE COURT: If you're going to refer to them again,
4 leave them there. If not, then don't clutter up the witness
5 stand.
6 MS. UITTO: Okay.
7 THE COURT: Thank you.
8 Q (By Ms. Uitto) Okay. So, after you applied for
9 Utah titles, were titles issued to you?
10 A Yes.
11 Q And can you explain again, after you applied for
12 titles, how were they mailed to you, how did you receive the
13 Utah titles?
14 A I'm sure they were mailed to me.
15 Q Okay. I'm handing you Plaintiff's Exhibits 3 and 4
16 and these are the copies of the Utah titles that were received
17 from the D.M.V. and they are registered in the name of All
18 Star Motion Picture Catering?
19 A Right.
20 Q Okay. And is that the correct address where these--
21 where you were residing at the time?
22 A Yes. It is.
23 Q Okay. And what are the titles for? What vehicles?
24 A Well, it's for the trailer and the tractor.
25 Q Okay. And in Exhibit--in the first exhibit that I

1 well, actually, longer than that, 'cause I--I was selling the
2 house that I was--that I bought and I used it for storing a
3 lot of equipment, actually, at the time.
4 Q Did you--did you have any contact with Mr. Walter
5 during this time?
6 A Just occasionally, when he needed money, I'd send
7 him some money.
8 Q Okay.
9 A Maybe a thousand here, five hundred there kind of
10 thing.
11 Q Okay. And did he know that you resided in the State
12 of Utah?
13 A Oh, yeah. Yes, he did.
14 Q Did he have knowledge that you'd registered the
15 vehicles in the State of Utah?
16 A Absolutely.
17 Q So, after the--the--they were stored in Utah for
18 several months, where were they stored after that?
19 A From here--or from Utah, they went back to Los
20 Angeles to Desmond's yard, I procured a storage lot--or
21 storage space for the equipment at that time.
22 Q Okay. And what was that arrangement with Desmond's?
23 Just for the vehicles?
24 A Just a month-to-month rental. I kept--actually, I
25 kept a couple things there besides the equipment--or besides

1 this equipment.

2 Q Okay. And were you--at this time, what was your
3 relationship with Mr. Walters?

4 A It was, you know, cordial. You know, we'd
5 occasionally talk. You know, it was--it was the arrange--you
6 know, I had an arrangement with him that, you know, that I was
7 going to be selling--or wanted to sell the equipment. I was
8 selling not just this truck, there was a couple other things
9 that were getting sold off, too, did in the Olympics, various,
10 you know, pieces of--of equipment that we used during the
11 course of the games.

12 Q Okay. And--

13 A I was way over-stocked; but--but go ahead.

14 Q --what was the conditions of the vehicles when you
15 moved them to Desmond's yard?

16 A The pipes were--had frozen during the games, so
17 there was--you know, the pipes--the plumbing, anyway; but
18 other than that, it was in pretty good shape. I mean,
19 definitely was use--serviceable.

20 Q Okay. And was it fully stocked?

21 A Fully stocked. Absolutely, to the brim.

22 Q Okay. Now, when you moved them to Desmond's, who
23 was responsible for paying storage fees?

24 A I was, at the time.

25 Q Okay. And did they stay at Desmond's indefinitely?

1 A Well, no, not indefinitely. It--it was just there
2 for the--until--until conditions or situations required the
3 truck to be used, but that--that situation occurred because I
4 already had another truck, so this truck just basically sat
5 and collected dust.

6 Q Okay. And approximately how--

7 THE COURT: Excuse me, Ms. Uitto. I'm a little
8 unclear. Could you tell me when the trucks went into storage
9 and did they remain there and if they did, for what period of
10 time?

11 THE WITNESS: Okay. I don't recall when--the--the
12 month, for instance, that they went into storage. It would
13 have had to have been some time in, like I think somewhere
14 around the summer of 2002, or--or--early summer.

15 THE COURT: Okay.

16 THE WITNESS: 2002. They would have stayed at
17 Desmond's yard probably four to six months, I would think,
18 somewhere in that zone.

19 Q (By Ms. Uitto) And after Desmond's, where were they
20 moved to, after that?

21 A Well, that's when I made an arrangement with Wally
22 to--he was going to start paying, he was going to help me pay,
23 let's put it that way, towards the storage, this was becoming
24 a bit of a burden. At the time, I wasn't working, it was like
25 right after the Olympics, so it--there wasn't a lot of work

1 coming in, for me, anyway. He was--the arrangements were he
2 was going to start helping me pay. Well, he didn't.

3 So, I said, we're going to have to find another spot
4 for it. He says, well, I've got a spot, they'll let me keep
5 it at Four Stars Catering. I said, well, then, good, let's
6 take it down to Four Stars.

7 So, he was al--he was in L.A., I was working on
8 something some place else, and I don't recall where I was, but
9 anyway, the conversation was very specific, that he was going--
10 --that he had a spot to take it. So, he took it from Desmond's
11 to Four Stars yard. It was at the Four Stars yard for, I--
12 several more months and finally, a guy--one of their managers
13 there, called me up and said, we're going to have to have you
14 move the vehicle, you're--you know, you're the registered
15 owner of the vehicle, you know, you're the owner of the
16 vehicle, so you're responsible for moving it.

17 I said, well, isn't Wally in town? Well, no, he's
18 in Israel is what they told me. So, I said, well, you know,
19 the--what--all I could do is, you know, pay you guys, you
20 know, something to just, you know, for good faith. At that
21 time, they said, don't worry about it, we'll wait 'til Wally
22 gets back and get it all sorted out.

23 I didn't even know when Wally came back, but at that
24 point, Four Stars was so upset about the truck being there for
25 a protracted amount of time, Wally finally came to bat and

1 moved the truck over to the Santa Clarita location.

2 Q Okay. And when they were moved from Four Star
3 Catering to the Santa Clarita location, where were the titles?

4 A I had them.

5 Q You had them?

6 A Yeah.

7 Q Okay. And at what time--or was there an agreement
8 between you and Wally--what was the agreement between you and
9 Wally to the future of his vehicles? What was supposed to
10 happen to them?

11 A Well, I was actively pursuing trying to sell them,
12 myself. And I had two potential buyers, one was out of Las
13 Vegas that never--he never even came over once he saw the--
14 when he saw the year of the vehi--of the trailer, he really
15 didn't want anything that old. And then there was another guy
16 named Ted Cantrell out of Louisiana, New Orleans, that came
17 out to look at them.

18 And that's when I was contacted by, actually a guy
19 named Ron Welsh, a friend of--a mutual friend of Wally and I,
20 and I don't know where Wally was or why he didn't contact me
21 himself, but Ron asked for a--a--what do you call it? A power
22 of attorney, so they could negotiate the deal with this guy.

23 Now, I'm the one that found the guy and the whole
24 deal and I says, well, that's fine, but we're going to--you
25 know, whatever get out of the deal, I'm going to get my piece,

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1 then whatever is still (inaudible) Wally, get his piece.
 2 At that time is when I signed a--bill--a--what you
 3 call it? A--gosh darnit, I keep forgetting the name of it--a
 4 power of attorney.
 5 Q Uh huh (affirmative).
 6 A And that was it. The guy came out, he saw it, he
 7 saw the rig and he said, well, structurally, it looks unsound,
 8 there's--the kitchen itself, so I'm really not that interested
 9 and went ahead and bought another truck while he was in L.A.
 10 And that was that. There was no more conversation about it.
 11 I talked--you know, Wally kept bugging me about, you
 12 know, continuing to--you know, to pay him, which I had been
 13 doing anyway, a little here, a little there, you know, and--
 14 and that was it.
 15 And then you can fast forward again up to when I did
 16 need the truck again.
 17 Q Okay. So, after the conclusion of this deal, when
 18 you signed the power of attorney, who did you give the power
 19 of attorney to?
 20 A I didn't give it to anybody. I actually mailed it
 21 to--I think I mailed it to Wally, but I was--I was asked to
 22 do--to do that by this guy, Ron Welsh.
 23 Q Okay.
 24 A So, that they could--so, they--you know, 'cause they
 25 were there, they could perfect the deal with--with this buyer.

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1 Q And where was the location of the titles then at
 2 this time?
 3 A I still had them.
 4 Q Okay. So,--
 5 A I think I still had them.
 6 Q Okay.
 7 A Well, anyway, yeah.
 8 Q So--
 9 THE COURT: So, what was your answer? Do you think
 10 you had them or did you still have them?
 11 THE WITNESS: I'm sure I had them.
 12 THE COURT: All right.
 13 MS. UITTO: Okay.
 14 Q (By Ms. Uitto) So, then you made another deal with
 15 Mr. Zelig--or Mr. Walter, you were saying?
 16 A Well, it's been described as another deal, but as
 17 far as I'm concerned, it was a continuation of the same,
 18 'cause nothing was ever really--there was no transfer of
 19 title, there was no transfer of ownership, there was just a--
 20 the only thing that was transferred was where the truck was
 21 parked.
 22 Q Okay. So, after the--the potential sales fell
 23 through, what was the next agreement or the--an agreement that
 24 you and Wally would have made?
 25 A A couple more months went by, business started

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1 picking up again for me, especially in New Mexico, and it
 2 became evident that I was able to complete--so-called complete
 3 this deal. And at that time, I was still trying to get a
 4 number, as far as a balance due on the--on the equipment. And
 5 because neither one of us--we're both very guilty of horrible
 6 record-keeping, entered into a--another arrangement to
 7 complete or consummate the deal. At the time, it was
 8 completion of whatever the deal--he needed another ten
 9 thousand is what it came down to.
 10 THE COURT: Give me a date on this, please, so we
 11 don't--
 12 Q (By Ms. Uitto) Yeah. Approximately when was this?
 13 A This would have had to have been in, oh, good lord,
 14 I'm just lost with these dates. Where--what--what year are we
 15 in right now?
 16 Q Approximately 2004.
 17 A Good, 'cause that's what I was thinking, it must
 18 have been somewhere in there.
 19 Must have been like in the fall of 2004.
 20 Q Okay. So, what was the--what was the transaction,
 21 what was the deal that took place in the fall of 2004?
 22 A Another \$10,000.
 23 Q Okay.
 24 A And at that time, there was a--he tried--he tried to
 25 hit me with a--again, another 50,000 and I said, no, there's

Page

1 no 50,000. And he says, well, if you're going to make this--
 2 there's no more 50,000. It's like, what's--what's the balance
 3 due? And I needed the truck, I needed to move, I was only in
 4 town for three days. Excuse me.
 5 So, I brought him the cash again. At this time, I
 6 took off--I took off with the equipment--but oh, yeah, but
 7 also in that deal was, there was some--this--the Suburban. the
 8 Chevy Suburban. And the Chevy Suburban, which had about
 9 280,000 miles on it, he was trying to get me to pay him 5,000
 10 for it. I said, well, no, I'm not going to pay you 5,000 for
 11 it, but he says, well, we'll just put that into the deal.
 12 Well, we still didn't have a total for what this deal was.
 13 I took the Suburban, drove that out to New Mexico,
 14 came back, because of course, the truck had to get tires and
 15 again, on it, and came back and got the--the catering truck
 16 and then drove that back out to New Mexico.
 17 Q Okay. And where were the titles during this time.
 18 from where they were at Desmond's, they were at Four Star
 19 Catering, they were at the lot in Santa--
 20 A The--the titles, at--at one point, I'd given them
 21 back to Wally, but that was only for the purposes of--of--of
 22 this pote--of another potential deal.
 23 Q Okay.
 24 A But then there was--when--when I took off from--
 25 from--this last time from L.A. back to New Mexico, he said

1 didn't have them any longer, but--that he had moved and he'd
 2 lost them somewhere. So, I didn't have any--you know, I--I
 3 wasn't worried about it, I knew I could get duplicate titles,
 4 there was no big deal, but that wasn't even--you know, that
 5 wasn't the point. The most important point to me was, you
 6 know, how much do I still owe you? So, anyway...

7 Q Okay. So, after this deal was done, where--you--you
 8 took the vehicles--you testified you took the vehicles to New
 9 Mexico, the title were lost. How did you get--regain
 10 possession of titles again to these vehicles?

11 A I applied for them.

12 Q Okay.

13 A Wasn't there some place in there--I mean, am I
 14 allowed to ask questions?

15 Q No.

16 A No. Okay.

17 Q So, you applied for duplicate titles?

18 A Right. Duplicate titles.

19 Q I'm handing you Plaintiff's Exhibits 5 and 6 and
 20 these are the applications for Utah duplicate titles to both
 21 vehicles.

22 A Yes. They are.

23 Q Okay. Now, on these applications for Utah titles,
 24 did you fill out the information under owner?

25 A Yes.

1 were lost, stolen or mutilated. I mean, I--I had no idea
 2 where they were at the time.

3 Q Okay.

4 A And that was based on what I was told by Wally, that
 5 he didn't know where they were at the time.

6 Q Okay. Were you and Wally on friendly terms at this
 7 time?

8 A Relatively. It was getting a little more strained
 9 because of the financial aspects of it.

10 Q Okay. And--

11 MS. UITTO: Okay. Move to admit Exhibits--
 12 Plaintiff's Exhibits 5 and 6.

13 MR. COOK: No objection.

14 THE COURT: They're received.

15 Q (By Ms. Uitto) And once you received the duplicate
 16 titles from the State of Utah, where were they then titled?

17 A I re-titled them in New Mexico.

18 Q Okay. And why did you re-title them in New Mexico?

19 A Well, because I moved my entire business to New
 20 Mexico. I re-titled all of my equipment in New Mexico.

21 Q Okay. And okay, I am now approaching with copies of
 22 the New Mexico titles. Okay? Are these true and
 23 representative copies of the titles that you have on the
 24 vehicles?

25 A Yes.

1 Q And did you fill in the information about the VIN
 2 numbers?

3 A Yes.

4 Q And the description?

5 And then did you sign under the statement that says,
 6 I/we hereby make application for duplicate title in lieu of a
 7 certificate that was lost, stolen, mutilated or ineligible and
 8 agree to indemnify and so on and so forth.

9 A Yes.

10 Q Did you--is that your signature under that
 11 statement?

12 A Yes. It is.

13 Q And can you read the date on these exhibits?

14 A Looks like 11-2--oh, yeah, right, 11-2-04.

15 Q Okay. And when you filled these out, were you under
 16 the--did you--to your firm belief--

17 MR. COOK: Your Honor, I'm going to object to the
 18 leading nature. This is a sensitive area.

19 MS. UITTO: Okay.

20 THE COURT: And the Court will sustain the
 21 objection.

22 MS. UITTO: Okay.

23 Q (By Ms. Uitto) What--what was your knowledge of
 24 the--the original titles at this time?

25 A The originals? That they were unavailable, they

1 Q Okay. And is there any second lienholder on--listed
 2 on these titles?

3 A No.

4 Q Did Wally know you were--where you resided?

5 MR. COOK: Well, I'm going to object as to calling
 6 for a conclusion.

7 THE COURT: Yeah As to his knowledge without
 8 further foundation. Plus, it is leading, so sustained.

9 MS. UITTO: Okay.

10 Q (By Ms. Uitto) When you--when you left California
 11 with the vehicles, what did you tell Wally about where you
 12 were going?

13 A Told him I was going to New Mexico, and he knew
 14 that, a hundred percent.

15 Q Did he ever contact you in the State of New Mexico?

16 A Plenty of times.

17 MS. UITTO: Move to ex--move to admit Plaintiff's
 18 Exhibits 7 and 8.

19 MR. COOK: No objection.

20 THE COURT: Received.

21 Q (By Ms. Uitto) And are these currently the titles
 22 that you hold, today?

23 A Yes.

24 Q Next, there is a list of payments that have been
 25 submitted--

1 MS. UITTO: And your Honor, just for the sake of
 2 keeping track, is it okay if we just admit this entire stack
 3 of pages under Exhibit No.--I think we're up to Exhibit 10.
 4 THE COURT: We're up to 9.
 5 MS. UITTO: 9?
 6 THE COURT: If you want to identify them or--or have
 7 somebody tell me what it--what it purports to be and if
 8 there's no objection, that would be fine; but they need to be
 9 identified for the record.
 10 MS. UITTO: These are--and I'll be going through
 11 these each by--one by one with Mr.--Mr. Firkins. Each one of
 12 these are his receipts that he--the--the receipts that he kept
 13 and payments that he made to Mr. Walter.
 14 THE COURT: So, the multi-page No. 9 is--
 15 MS. UITTO: Yes.
 16 THE COURT: --all entries regarding alleged payments
 17 made by Firkins to Walter?
 18 MS. UITTO: Yes.
 19 THE COURT: Any objections then, with that proffer?
 20 MR. COOK: No, your Honor.
 21 THE COURT: Very well. In that regard, 9 is
 22 received.
 23 Q (By Ms. Uitto) Okay. So, now, going through each
 24 one, okay, the first one, Mr. Firkins, that I'm going to hand
 25 you, can you explain the documents and the amounts that are

1 listed?
 2 A It's one of many payments I made to Wally.
 3 Q Okay. And what is the date on that document?
 4 A 10-23-04.
 5 Q And what is the amount that was paid?
 6 A \$500, 546.64 with the charges. He always insisted
 7 that I do the--these types of payments, but also--I also
 8 insisted that if he wanted them this way, I was going to--he
 9 was going to be paying for the Western Union, itself.
 10 Q Okay. And the next one I'm going to hand you--
 11 THE COURT: Now, what was the date on that first
 12 one?
 13 MR. COOK: 10-23.
 14 THE WITNESS: 10-23-04.
 15 THE COURT: 10-23-04. Thank you.
 16 Q (By Ms. Uitto) Okay. And I'm handing you a second
 17 receipt. Can you identify the date and the amount on that
 18 one, too?
 19 A It's a thousand dollars, a thousand seventy-nine
 20 with service charge on 11-12-04.
 21 Q Okay. And now I'm handing you the third one. Can
 22 you give us the date and the amount on that receipt?
 23 A Odd number; anyway, \$920, there was a service charge
 24 of \$79, which made it a total of \$999 and that was on 11-20 of
 25 '04.

1 Q And now I'm handing you a fourth one and can you
 2 give us the date and the amount on this receipt?
 3 A 11-29-04, for another \$920, for a total of \$999.
 4 THE COURT: So, I've got two nine twenties, one
 5 11-20 and one 11-29; right?
 6 MS. UITTO: Yes.
 7 THE COURT: Okay.
 8 MS. UITTO: Yes, your Honor.
 9 Q (By Ms. Uitto) Okay. The next one I'm handing you
 10 is just a shipping receipt and can you give us this date on
 11 this?
 12 A Looks like, let's see, December of '04, December
 13 2nd.
 14 Q Okay. And there's not any notation on here for how
 15 much the payment was made--how much payment was made.
 16 A No. I don't--
 17 Q But this was something in--it was a shipping receipt
 18 for something shipped to--
 19 A Right.
 20 Q --Mr. Zelig--or Mr. Walters?
 21 Okay. I'm handing you the sixth document in that
 22 stack and can you give us the date and the amount also?
 23 A \$350 on 12-7-04, 388.09, total.
 24 Q Okay. And I'm handing you the seventh document in
 25 that pack. Can you give us the date--another Western Union

1 can you give us the date and the amount on that one?
 2 A 12-12-04 for \$300.
 3 Q And I'm handing you the eighth document, another
 4 Western Union receipt. Can you give us the date and the
 5 amounts?
 6 A Three hundred and fifty, the total of 386 on
 7 12-17-04.
 8 Q Okay. And I'm handing you the ninth document in
 9 there, it's a Western Union sales receipt. Can you give us
 10 the date and the amount on--
 11 A 4--4-22-05 and the amount was \$1,000.
 12 Q I'm handing you now the tenth document in that
 13 stack, which is a Bank of America receipt. Can you give us
 14 the date and the amount on that?
 15 A Two thousand? Yeah. \$2,000. And that is--date, I
 16 don't see the date, where's the date? Oh, May 13th of 2005.
 17 Q Okay. And the eleventh document in that stack is
 18 another Bank of America receipt.
 19 A For another thousand dollars for--on May 28th of
 20 '05.
 21 Q And the twelfth document in that stack is another
 22 Bank of America. Can you give us the date and the amounts o
 23 that one?
 24 A Yeah. The--well, there's a notation here for a \$350
 25 Western Union on 6-23 of '05 and then there's a \$2,000 Bank

1 America cashier's check on June 8 of '05.
 2 THE COURT: Well, to be--there--there's handwritten
 3 \$350--
 4 MS. UITTO: Right.
 5 THE COURT: --but the cashier's check talks in terms
 6 of a thousand dollars?
 7 THE WITNESS: Two thousand.
 8 THE COURT: \$2,000?
 9 THE WITNESS: Yes, sir.
 10 MS. UITTO: And then--
 11 MR. COOK: I'm not--I'm not finding that. Where--
 12 where are we with the list?
 13 MS. UITTO: It should be a Bank of America cashier's
 14 receipt that has a notation of \$350 written on it, but then
 15 it's the Bank of America cashier's check for \$2,000.
 16 MR. COOK: Can you help me out, Counsel?
 17 MS. UITTO: Yes.
 18 MR. COOK: Because I found the 350, I think.
 19 MS. UITTO: It's one back. I think you went out of
 20 order. Let's see. Yeah, this is where we were at.
 21 MR. COOK: Okay. That--okay, we're--
 22 MS. UITTO: We're actually on that one. He jumped
 23 ahead.
 24 MR. COOK: All right.
 25 THE COURT: Okay. Now, I'm looking at that

1 cashier's check. I have problems with the handwritten
 2 notations of the 350. Are you saying that that's evidence of
 3 another 350 payment in addition to the \$2,000? And if that's--
 4 so, where is the supporting documentation for that 350?
 5 MS. UITTO: Actually, the next document over.
 6 THE COURT: Okay. Thank you.
 7 MS. UITTO: Okay. So, the next--
 8 THE COURT: And so I've got the 350 and I've got
 9 2,000 and what's the date of the 2,000? 6-23?
 10 MS. UITTO: Yes.
 11 THE WITNESS: Yes, sir.
 12 MS. UITTO: So, this is the next document that
 13 should be after that Bank of America notation--or tracked with
 14 the note--\$350 notation.
 15 THE WITNESS: Oh. Okay.
 16 Q (By Ms. Uitto) Can you give us the amount and the
 17 date on that document?
 18 A Sure. That's 6-23-05.
 19 Q And what's the amount?
 20 A Three fifty, 386 with the charges.
 21 Q Okay. The next document that I'm going to hand you
 22 is a copy that you kept. Can you--it's not a very good copy,
 23 but to your--best of your recollection or to you, what you can
 24 read, can you give us the date and the amount on that one
 25 there?

1 A Looks like it says 300.
 2 Q Okay.
 3 A And I can't make out a date.
 4 Q Okay.
 5 THE COURT: Help me, Counsel.
 6 THE WITNESS: Wait a minute. It's up here. Nope.
 7 It's--I can't read it--oh, what's over here?
 8 MS. UITTO: Yeah. The second page over.
 9 THE WITNESS: Oh. Yeah. 6-23-05 for 350, so that
 10 supports this one. This is just a copy of that one, I think.
 11 MS. UITTO: Okay.
 12 THE WITNESS: 2-6-0, yeah, this is a copy of that
 13 one.
 14 MS. UITTO: Okay. All right.
 15 Q (By Ms. Uitto) So, that's not a new payment then on
 16 that date?
 17 A No. It's not an additional payment, just a copy of
 18 the existing (inaudible)
 19 Q Okay.
 20 A Yeah.
 21 Q Okay. Now, the next one I'm going to be handing you
 22 is another Western Union receipt. Can you give us the date
 23 and the amount on that one?
 24 A Five hundred and that was on 7-1 of '05, for a total
 25 of 544.

1 Q Okay. Okay. We're coming to the end. I hand
 2 the next Western Union receipt. Can you give us the--
 3 A You're going to need a break.
 4 Q --date?
 5 A 7-16-05 for \$350, 386, total.
 6 Q Okay.. And this receipt, could you give us the da
 7 and the amount?
 8 A 8-6-05 for \$400, 436, total.
 9 Q And the last one that I'm handing you is a shippi
 10 receipt.
 11 A Yes.
 12 Q What is the date on that document?
 13 A The date is August 10th, 2005.
 14 Q Okay. And do you recognize that handwriting on
 15 document?
 16 A Yes. It's mine.
 17 Q And what does it say?
 18 A Says Check No. 3653 for \$2,000.
 19 THE COURT: So, what does that handwriting indi
 20 That in--that pursuant to the shipping invoice of \$22.72
 21 enclosed a \$2,000 check?
 22 THE WITNESS: Yes, sir. That's the intent--
 23 THE COURT: Is--is that--
 24 THE WITNESS: --of that--
 25 THE COURT: Excuse me. Excuse me.

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1 THE WITNESS: Oh. Sorry.
2 THE COURT: Is that the testimony, Ms. Uitto?
3 MS. UITTO: Yes. It--
4 THE COURT: Do we have documentation for that \$2,000
5 check?
6 MS. UITTO: Not with us, no.
7 THE COURT: All right.
8 MS. UITTO: This is the--this is Mr. Firkins'
9 record-keeping at this present time.
10 THE COURT: Okay.
11 Q (By Ms. Uitto) Are--is this a summary of all the
12 transactions that you made with Mr. Walters that you have
13 proof of those transactions?
14 A As far as--insofar as what you--the ones that I
15 actually have documentation of.
16 Q Why did the records start in October of 2004?
17 A I don't know why they would have started then. I
18 mean, as opposed to what? As opposed to back in 2001?
19 Q 2001? Uh huh (affirmative).
20 A 2001 was--was all cash stuff that we did then. The
21 only reason I took--I got records this time, because of the--I
22 don't know how--how to put it politely, but the tenuous nature
23 of Mr. Walter's behavior.
24 Q Did you have--
25 A So, I was--I was concerned about exactly what we're

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1 doing right now, let's put--
2 Q Were you given a payment schedule by Mr. Walters?
3 A No.
4 Q How were you informed a payment was due?
5 A When he needed money.
6 Q Did you make all of your payments directly to Mr.
7 Walter?
8 A No. I actually paid his rent a couple of times for
9 him, to a guy named Tony Talibi.
10 Q And--
11 A And I paid that by check also.
12 Q Okay. And why did payments stop in 2005?
13 A To--to my understanding of our deal, it--we were way
14 past anything that resembled a final pay-off and I was, quite
15 frankly, overwhelmed with the barrage of--of phone calls from
16 Mr. Walter and as his situation with his divorce degraded even
17 more so, so did become his--his demands for more money. So,
18 basically, I was being blackmailed. I mean, that was my
19 understanding of it.
20 Q Okay.
21 MS. UITTO: Plaintiff's move for admission of
22 Exhibit 9, the stack of--
23 THE COURT: It's already been received.
24 Did anyone total this for me?
25 MS. UITTO: I have a total of like 14--I can give

Pa

1 you a total, if you want.
2 THE COURT: Okay. Of the--of the payments from
3 10-23-04, concluding in August 10th of '05--of '05?
4 MS. UITTO: Yes. I have, from those, I show, if I
5 math is correct, \$13,940.
6 THE COURT: And--and that is inclusive of the
7 Western Union fees?
8 MS. UITTO: No. That's not counting the Western
9 Union fees.
10 THE COURT: Okay. Okay. So, thirteen thousand
11 what?
12 MS. UITTO: \$13,940.
13 THE COURT: \$940.
14 And did you include the \$2,000, which maybe you
15 to a contest of the 8-10-05?
16 MS. UITTO: Yes.
17 THE COURT: Okay. And was that your concern, I
18 Cook?
19 MR. COOK: Well, it was, but it doesn't come up with
20 the total I have and that may be because there are additional
21 documents that have been submitted today that I haven't
22 before and I just need to verify, double-check.
23 THE COURT: Yeah. All I wanted was a ball park estimate
24 to the cumulative total of P-9 and that's something in the
25 neighborhood of \$14,000.

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1 MS. UITTO: Okay.
2 THE COURT: All right. Thank you. Just a working
3 figure for the Court.
4 Q (By Ms. Uitto) Now, I am now handing you
5 Plaintiff's Exhibit 10. Can you identify this document?
6 A Yes. It's a check I wrote to Wally for a thousand
7 dollars.
8 Q And what is the date on this check?
9 A Oh, it's cut off. Got me. I don't know. The
10 date's cut off, but he's got his thumb print on it.
11 Q Okay. So, this was another payment that you had
12 made to--
13 A Yeah.
14 MR. COOK: Objection. Objection. Leading.
15 THE COURT: Yeah. And--and I want some foundation
16 on this one.
17 Are you talking about a--a receipt dated 03690? Is
18 that--is that the document, 'cause that's not--that's part of
19 9 and if you want to designate it as 10...
20 MS. UITTO: Oh. That is part of 9. That's my
21 mistake, your Honor.
22 THE COURT: Yeah. Okay.
23 MS. UITTO: You're right.
24 THE COURT: So, we're continuing on 9.
25 MS. UITTO: Okay. So, this is--

1 THE COURT: And it is receipt 03690; is that
2 correct?
3 MS. UITTO: Yes.
4 THE COURT: Okay. Thank you.
5 MS. UITTO: Okay.
6 Q (By Ms. Uitto) Can you describe what this--what
7 this document is?
8 A It's a check I wrote to Wally, which is one--one of
9 the many payments.
10 Q Okay. All right.
11 THE COURT: But you don't have a date on it?
12 THE WITNESS: Well, there's a date, but it's cut off
13 on the copy machine.
14 MS. UITTO: On the receipt. Yes.
15 THE WITNESS: Looks like it says 53, though.
16 MS. UITTO: Okay.
17 Q (By Ms. Uitto) The last document then in Exhibit 9
18 is this. Can you explain what this is?
19 A This is just my own notations of payments, cash and
20 otherwise, actually, from my own records.
21 Q Okay. So, these were examples or--
22 MR. COOK: Objection.
23 THE COURT: What were they?
24 What does that represent, again?
25 THE WITNESS: Are you asking me?

1 between you and Mr. Walters at this time?
2 A Yeah. It was horrible. We were--couldn't have a
3 civil tongue over the phone.
4 Q Okay.
5 A And he was--he was--well, as you can see here, I--I
6 told him to quit calling me at like 3:00 o'clock in the
7 morning, things like that, you know, as--he was under a lot of
8 stress.
9 Q Okay.
10 THE COURT: And that letter is dated 1-21-05;
11 correct?
12 THE WITNESS: Yes, sir.
13 THE COURT: Thank you.
14 MS. UITTO: Okay.
15 Q (By Ms. Uitto) And you wrote this letter?
16 A Oh, yeah.
17 Q And how did you deliver it to Mr. Walters?
18 A Mailed it to him.
19 Q Okay.
20 MS. UITTO: Plaintiffs moves for admittance of
21 Exhibit 10.
22 MR. COOK: No objection.
23 THE COURT: Received.
24 Q (By Mr. Uitto) So, when--when, approximately, was
25 the last payment that you made to Mr. Walters?

1 THE COURT: Yes.
2 THE WITNESS: Oh. This is my--it's like my ledger,
3 just a--just a hand ledger that I had on file, that I kept all
4 these documents in.
5 THE COURT: Okay.
6 THE WITNESS: So that some of it represented what
7 was in these documents and others were just like cash payments
8 and so on, you know, like when I'd see him, I'd give him money
9 and I would make a notation on my little note thing here.
10 MS. UITTO: Okay. Okay.
11 Q (By Ms. Uitto) Now, you wrote a letter to Mr.
12 Walters--
13 A Right.
14 Q --at one point?
15 A Uh huh (affirmative).
16 Q So, I am handing you a document that is labeled as
17 Plaintiff's Exhibit 10.
18 A Okay.
19 Q Can you explain what this document is?
20 A Well, this was pretty much when I'd gotten the--the
21 so-called last straw. I couldn't get him to--to come up with
22 a final number and then I gave him a--a quick accounting over
23 the telephone and then another partial accounting in the
24 letter itself, just to--to illustrate my point.
25 Q Okay. And can you describe your relationship

1 A My estimation would be somewhere--let's see, well,
2 I--actually, those documents that you just showed me, the last
3 payment would have been dated as one of those, so, let me--
4 what would that be? That's August of '05?
5 Q Okay.
6 A Yeah.
7 And when was the letter dated?
8 Q I don't recall. I'll hand it back.
9 A I'm sorry.
10 THE COURT: Exhibit 10 was dated January of '05.
11 THE WITNESS: Okay.
12 THE COURT: That's why I asked.
13 THE WITNESS: That's fine. Thank you.
14 Q (By Mr. Uitto) Okay. Where were the vehicles in
15 the fall of 2005?
16 A Fall of '05? I'm thinking here in Utah. I think
17 we were working on a film here.
18 Q Okay. And what film were you working on in the fall
19 of 2005?
20 A I think it was American Pastime.
21 Q And what were the conditions of the vehicles at this
22 time?
23 A Serviceable. I mean, they were--you know, they
24 aren't--they never have been beautiful equipment. It's just--
25 they were just serviceable, they're usable, you know.

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1 Q And how long did this job of American Pastime take?

2 A Couple months.

3 Q Okay. And can you describe how the vehicles were

4 marked or identified?

5 A Pretty vivid paint job, stripes down the side. The

6 name of All Star Motion Picture Catering on the door and New

7 Mexico plates, I don't know, that's about it.

8 Q Okay. And when that job concluded, American

9 Pastime, where did the vehicles go, after that job?

10 A I stored them at the--made an arrangement with the

11 studio, Salt Lake Studio, or something like that, forget the

12 name of them now, but I made arrangement there to rent storage

13 space from them.

14 Q Okay. In what city were the vehicles--

15 A Here in Salt Lake City.

16 Q Do you know an approximate address?

17 A 9--900 or 2100? I--I don't know the streets around

18 here that well, but it's on the west side of--of I-15.

19 Q Okay. And why did you leave them in Utah?

20 A Well, the next job was going to be in New Mexico, so

21 it really didn't make much sense to drive them back to L.A. or

22 California, to effectively take them to New Mexico.

23 Q Okay. And when you left the vehicles, was there any

24 security? Can you just describe what--what kind of area they

25 were stored--

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1 A Well, normally, they were--they were behind a fence

2 in a storage--not really--it's not really storage, it's

3 garages behind the studios that the truck was parked in, and

4 normally, the fence would have been closed and locked.

5 Q Okay.

6 A But during the day, they come and go all the time.

7 Q Okay. How did you first learn the vehicles were

8 moved from that location?

9 A One of my employees called me and told me.

10 Q Okay. And what did this individual tell you?

11 A He told me that the trucks were gone, basically, he--

12 -he says, did you--did you already move the trucks? I said,

13 no, I--I haven't touched them. He says, well, they're not

14 here.

15 Q Okay. So--

16 A And--

17 Q --what did you do next?

18 A What I did next was call the police department.

19 Q Okay.

20 A No. Excuse me. What I did next was call the owner

21 of the--of the storage place, or of the studio.

22 Q Okay.

23 A And he told me that--that Mr. Ruegner had--

24 MR. COOK: I'm going to object to the hearsay nature

25 of that.

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1 THE WITNESS: It's not hearsay. The guy told me

2 THE COURT: That's hearsay. Thank you.

3 THE WITNESS: Oh.

4 THE COURT: I'll be the judge of that.

5 THE WITNESS: Oh. Okay. Sorry.

6 MS. UITTO: Okay.

7 Q (By Ms. Uitto) So, at--it's--at some point, did you

8 learn who had possession of your vehicles?

9 A Yeah. After I hired a private investigator and--no

10 excuse me. I--I'm getting ahead of myself. I found out

11 through the catering network in town that Paul had been

12 the person that had removed my vehicles.

13 Q Okay. And did you do--did you contact Paul in a

14 way?

15 A Not at that moment, no. At that time, I went to--

16 investigated further to find out what was going on. That

17 when I talked to this--I don't know--I can't even say it,

18 talked to this guy that I--that I was renting the space from

19 Q Okay.

20 A He told me that these people had come to--you know

21 they were looking at the equipment and that--

22 MR. COOK: I'm going to--I'm going to object.

23 THE COURT: Sustained.

24 THE WITNESS: Okay. Well, I don't know how to

25 answer the question then.

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1 MS. UITTO: Okay.

2 Q (By Ms. Uitto) So, you--

3 THE COURT: Well, subsequent to talking with those

4 people and the information that you may have gained, what did

5 you then do?

6 THE WITNESS: Geez, let me think, it was pretty

7 confusing at that time. I think I called the police

8 department at that point.

9 Q (By Mr. Uitto) Okay. Did you call anybody else?

10 A Well, I--I talked to Jeff Wilkinson, I talked to

11 Brophy Jones, I talked to this guy, Greg Power. And through

12 all of those guys, that's when I found out that Paul was the

13 person who had it.

14 Q Okay. Okay.

15 A Are we good?

16 Q Did you--did you contact Paul directly at any time?

17 A Yes. Absolutely. In fact, I went and filed

18 another--went to the police department up in Paul's

19 neighborhood and told them that I was going to his house to

20 confront him and they suggested I didn't do that, that it's a

21 civil matter now, it's not criminal, it's not, you know, none--

22 -none of that, they says it's--it's a civil case, so you have

23 to deal with it in court.

24 But I did contact--I did call Paul, left several

25 messages, lengthy messages. I called--talked to his wife,

1 left a very lengthy message with her to tell him that he had
2 my equipment. And then--then I finally got wind that Wally
3 was involved and I called Wally and asked him what the hell
4 was going on and he said, I'll see you in Court, essentially,
5 or--or they'll see you in Court or something along those
6 lines. And that was pretty much the long and the short of it,
7 you know, as far as the--you know, that flurry of activity.

8 I had to be on a job in New Mexico, so I really
9 couldn't spend much time pursuing it, but I did hire a private
10 investigator to discover the locations and what had--and you
11 know, and to follow--you know, in other words, track the
12 vehicle.

13 The private investigator made me aware of the
14 transfer of ownership that had occurred from Wally to Ruegner.

15 Q Okay.

16 A So, that's when I kind of started putting everything
17 together.

18 Q Okay.

19 A And that's when I, of course, called you, I think
20 was somewhere in there.

21 Q Okay. And you did take back possession of your
22 vehicles?

23 A Eventually, yes, after--after I completed the job
24 in--in New Mexico, at that time, I did have the--the--the time
25 and--you know, that I could invest in discovering the location

1 definitely--you know, I've definitely taken it in worse
2 condition.

3 Q Okay.

4 A But it was all right--it was all right. It was
5 serviceable, still.

6 Q Okay. I'm handing you a document marked as
7 Plaintiff's Exhibit 11. Do you recognize this document?

8 A Yeah. That's my inventory list for the truck.

9 Q Okay. Can you describe the items that are on this
10 list?

11 A They were all the contents of the--or the contents
12 of the catering kitchen, the--the utility box and there's a
13 storage compartment on the back of the--of the trailer,
14 itself, so it literally had everything that I needed to, you
15 know, to complete my next job. And it's the stuff that I'd
16 just finished using on the job that we'd just completed.

17 Q Okay.

18 THE COURT: So, this is--this represents all your
19 inventory that was present in the vehicles in the fall of
20 2005, when you discovered that they were gone?

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you.

23 Q (By Ms. Uitto) And you do not have these items--d
24 you have these items in your possession now?

25 A No.

1 of the vehicles.

2 Q Okay.

3 A And once--once I did, through a third party, I was
4 able to, of course, recapture them.

5 THE COURT: And when was that?

6 THE WITNESS: That would have been when? March, I'm
7 thinking like March of '05--no, of '06. I'm sorry. My--my
8 memory's really foggy on these dates.

9 MS. UITTO: Okay.

10 Q (By Ms. Uitto) When you took back your vehicles,
11 did you do an inventory of what might be missing?

12 A Yeah. Everything was missing. Everything that's
13 inclusive in that inventory list.

14 Q Okay.

15 A It was fully-equipped when I--when it was parked.
16 It was ready to go to work on another show, so it had
17 everything in it that was needed to cater a--a film with 300
18 people.

19 Q Okay. And what was the condition of the vehicles
20 when you finally found them?

21 A Complete state of disrepair. There was construction
22 that had gone on inside the truck. There was a partially-
23 installed sink. The outside had been re-painted and a new
24 roof put on it--or a new covering for the roof. Let's see,
25 what else? I mean it wasn't in horrible condition. It was

1 Q Okay. And how could you identify some of the thi
2 on these lists?

3 A Well, some of it will be difficult to identify, only
4 because, you know, I--none of it's ever been out of my
5 possession, so a lot of it isn't even marked. There are
6 things--there are some things that are marked; for instance
7 the--the extra heavy aluminum stock pots. At one time, I
8 etched "All Star" on the side of them, whether or not that
9 still exists remains to be seen, but everything else is almos
10 considered generic.

11 Q Okay. How did you acquire a lot of these items?

12 A I bought them at everything from restaurant, used
13 restaurant, (inaudible) clothes, to, you know, to new
14 purchases to, you know, just--just accumulate things over
15 years of doing business.

16 MS. UITTO: Move to admit Plaintiff's Exhibit 10.

17 THE COURT: 11.

18 MS. UITTO: 11.

19 MR. COOK: Your Honor, I object on two bases. One
20 during discovery, I asked the plaintiff to produce any and
21 documents that would evidence his damages in this case. I
22 never been identified before that he claimed any damages a
23 result of this.

24 And secondarily, it's not part of their--their
25 complaint, as well.

17th or 18th of January that he--he had contacted me.

Q He contacted you? You didn't contact him?

A Yeah. I didn't contact him.

Q When he contacted you, tell me what he said and what you said in that first conversation.

A Well, he--he kind of went into a big story about his truck, about how him and Firkins had come into a deal--

MS. UITTO: Objection. Hearsay, your Honor.

THE COURT: Well, that seems like a party opponent, statements of a party opponent.

MS. UITTO: But he's not here to cross-examine his testimony. Mr. Zelig--Mr. Zelig--sorry.

THE COURT: Well, it's not--

THE WITNESS: I didn't say--

THE COURT: It's not hearsay because it's a statement of a party opponent and that's--that's the rules.

Q (By Mr. Cook) Do you recall the question?

THE COURT: Sustained.

Continue.

Q (By Mr. Cook) Yes. Go ahead. If you recall the question, go ahead.

The question is, from the best of your memory, tell me what you said and what he said in this conversation.

A What he had said was that he had--he had--he had--he owned the truck, the truck had been stolen from him and it had

disappeared. And then he went into detail of, that he had made a deal with Rick Firkins and that--and that--in 2001 for the Olympics and the deal was that--that he gave him a certain amount of money as a down payment and then he was going to pay him off at the end of the Olympics.

According to his story, what he told me was that he returned the truck after the Olympics and said, Here it is, I don't want anything to do with it.

So,--and--and then he explained to me that he--for them to get in to Utah, they had had to do some weird thing with the title and the title--you know, some titles ended up in--in Rick's name, but he kept the original pink on--on one of the vehicles.

And then--and--and then he explained that they went into another deal in 2004, in the fall of 2004 and said they had made a new deal, something about that they agreed on a \$10,000 down payment and that he bought some Suburban for \$5,000 from--from Wal--Rick--Rick had bought some Suburban from Walter for \$5,000 and that, you know, kind of went on to the fact that Rick never came up with the down payment, the \$10,000 down payment to start out the whole deal, or this new process, and that he had made some payments throughout the time, but it had never been that initial \$10,000 that started the deal in--that they--the next deal that they had made.

And that--that, all of a sudden, Rick had sent him a

1 letter and then Rick disappeared. And then that--that was the
2 time that he--he went to, you know, Bryce Greer in New Mexico
3 and--and--and made some things, et cetera, et cetera, and on
4 that; so that was kind of his story on--on how that all went
5 about there.

6 Q Okay. So, during this first conversation, he
7 reported to you that he had filed reports that it--with New
8 Mexico and Utah?

9 A Yeah.

10 Q Interrupting just for a moment, subsequently, during
11 the discovery in this case, did you determine that that, in
12 fact, had been done?

13 A You know, I--I--I don't think at that time, I did
14 check in--

15 Q No. I understand that, but after this lawsuit was
16 filed, did you verify that, in fact, he had done that?

17 A Yeah.

18 Q I would invite you to look at Exhibits 15 and 16--15
19 and 17.

20 A Yeah.

21 MR. COOK: I'd move the introduction of these, only
22 for purposes that it verifies the story that Mr. Zelig Walter
23 told him during this initial conversation, your Honor.

24 THE COURT: Any objection, Ms. Uitto?

25 So, 15 is just Attention: Bryce Greer from Walter

1 and that's it.

2 MS. UITTO: Yeah.

3 THE COURT: Is that the only thing that's contained
4 in 15? That's the only thing I have. Is that what you have?

5 THE WITNESS: And the case number there, and the
6 case number is verified, I think, over here on No. 17, where
7 the--it says February 13th, whenever. What's the date on this
8 other one?

9 MS. UITTO: There's no date.

10 THE COURT: There's no date on 15.

11 THE WITNESS: Well--

12 MR. COOK: We have the fax date.

13 THE WITNESS: The fax date and then on the 17th is
14 the actual (inaudible) complaint.

15 THE COURT: Well, 15's not going to be received,
16 there is no connection and all--all it is is just that
17 "Attention, Bryce Greer," and that's it.

18 Do you want to move for 17?

19 MR. COOK: 17, your Honor.

20 THE COURT: Any objections?

21 MS. UITTO: Just the fact that there's no date on
22 it, your Honor, so we don't know when this was. I know we
23 know when it was faxed, but that doesn't say when the--

24 THE COURT: Right. Let's look for a date here.

25 It's signed but not dated on the second page.

MR. COOK: I believe that that date will likewise correspond with a date that's in Exhibit No. 47 where Mr. Greer inscribes a more detailed report the fact that he had been contacted by--actually by Firkins as well as Walter.

THE COURT: Well, is there going to be any dispute that--that Walter contacted the authorities and had reports generated on that, Ms. Uitto?

MS. UITTO: No. No. We're just saying there's no date on it, so we don't know when this was, but we're fine for letting it in.

MR. COOK: Oh.

THE COURT: Yeah. Yeah. And--and if the issue--yeah, if all the issue is he's using this to verify his statements, then you're not--you're not in any position to say, no, Walter didn't contact the authorities, no, Walter didn't talk to Greer.

All right. So, go on.

MR. COOK: Thank you. Thank you.

THE COURT: All right.

Q (By Mr. Cook) Anything else that you recall of this first conversation you had with him?

A He just said he was hurting for money and--and because he hadn't been paid by Rick, that he was getting kicked out of his house and was in some straits and all this

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stuff; so, I mean, that was part of his conversation, too, so it was kind of a--he was--he was in a position where he needed money, 'cause he was--he hadn't been paid for something that he was owed for.

Q What did you tell him that your interest was at that point in time?

A I said I'd be interested in buying the vehicle if all the paperwork was in order.

Q Okay. What was the next contact you had with Zelig Walter?

A Well, I think he called me the next day and said he wanted to come into town and repossess it, because in our previous conversation, he wanted me to repossess it, and you know, it's like, it's not my vehicle to repossess, you go do it yourself. He said, go get the police, go repossess that for me, it's like, no, this is your deal, if you want to do it, you go do it--you come and do it, it's not my thing.

Q All right.

A So, then he told me that he was going to come into town and do it. And I think that was like the 19th or 20th or something, that he--he decided to come into town.

Q And did you meet with him at that time?

A Yes. Actually, I picked him up at the airport. He asked me to take him where the--where the vehicle was, I took him to the location on Ninth West and 1700 South, behind those

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1 stages, and showed him the vehicles.

2 Q And what conversations, if any, did you have with him at that point?

3 A Well, he showed me a lot of stuff, paperwork on the vehicle that--the pink slip that he had on, I think it was on the trailer, and he showed me a lot of pictures of the truck and--and--and he showed me those--those titles that are in here that Rick had, the Utah titles that were not--Rick claims he didn't sign them over.

4 Q Let me just interrupt for a moment, and--

5 A Okay.

6 Q --turn to, I think it's 3 and 4 of the plaintiff's exhibits. Exhibit No. 3 and Exhibit No. 4.

7 A Yeah. He showed me these.

8 Q Okay. At the time you saw those documents, was the handwriting on Exhibit No. 4 that Mr. Firkins has identified?

9 A Yeah. This was here.

10 Q Okay. Referring to?

11 A The lien release, signature of lienholder, released insurance.

12 Q Okay. What did you tell him at that point? After seeing this paperwork?

13 A Well, I just told him, I said this is all good and fine, but I need to see the person that signed it, or if they signed it, I can't do any business with you. This isn't my

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1 thing, and I--and I called you and you confirmed that, that this was not a deal to be done, that this was--this was not a deal to be done.

2 Q Okay. What did you tell him he had to do, if anything?

3 A I said, if--if, you know--basically, he's oh, come on, I want to sell you this, and it's like, well, no, I--I don't--I can't buy it from you at this point, I said, I need the paperwork to be clean that I can take to the--to the D.M.V. here and--and re-issue titles for me here, if--if this deal is to go forward.

4 Q You mentioned that he showed you a pink slip. I'd like to direct your attention to Exhibit No. 10.

5 A Yeah.

6 Q Was that the document he showed you?

7 A Yes.

8 MR. COOK: Move the introduction of Exhibit No. 10, your Honor.

9 THE COURT: Any objections to--to 10 in defendant's packet?

10 MS. UITTO: No objection, your Honor.

11 THE COURT: Thank you.

12 The pink slip is received.

13 Q (By Mr. Cook) Did you have any discussions about power of attorney at that point in time?

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A I don't recall.

Q Okay. And I think you testified you were still not satisfied with the transaction. Did you tell him you needed to have clean titles before you could consider it?

A Yes.

Q Okay. What occurred with the vehicles at that point?

A Well, he called a locksmith and had him change the locks, because the keys that he'd brought with him didn't work on the vehicles. One key--

Q To all the vehicle? Or just the ignition? Do you recall?

A It was just the--it was just the cab of the truck, but his--his keys did work on the trailer, on the kitchen trailer. So, we were able to go in and look at that, see what that was all about, to make sure that it was something we were--I was interested in; but the--you know, the cab--the keys didn't work on the cab, they didn't work in the ignition.

Q Did he call a locksmith at that point?

A Yes. He called a locksmith and had him--had him change the locks and the keys; and then he called the police and said he was repossessing this, the Salt Lake Police, that he was repossessing this vehicle.

Q Did he do that in your presence?

A What?

Q Did he do that--

A Yeah.

Q --that in your presence?

A Yeah.

Q Okay. What did he do with the vehicle after that?

A After that, he--he--he got in it and took it to another location, pulled it off the property, took it to another location, parked it and asked me if I would take possession of it until he got all this cleared up, for him. And I said yes, I would. And I left the vehicle there for about a day and then I took possession of it the next day and moved it to some property that I had control over.

Q Okay. Turn to Exhibit No. 31.

A Okay.

Q First of all, tell me, what is Exhibit No. 31?

A It's a Pig Boys check made out to the D.M.V. for \$342, it says title to Zelig Walter's catering truck. He called me and said he didn't have the money to get this thing re-titled, so he asked me if I would give him some money to re-title it and then we'd just take it off of whatever we agreed on on the price of the vehicle.

Q So, the contemplation here, if I may interrupt, the D.M.V. we're talking about here is not the Utah D.M.V.--

A No. It's--

Q --this is the California D.M.V.?

1 A As far as I understood. I sent the check out to
2 Cal--California and they returned the check unused.

3 Q So, then the check then was subsequently returned
4 unused?

5 A Yes.

6 Q Okay.

7 MR. COOK: Move the introduction of Exhibit No.--

8 THE COURT: 31?

9 MR. COOK: --31.

10 THE COURT: Any objections?

11 MS. UITTO: No objections, your Honor.

12 THE COURT: Received.

13 Q (By Mr. Cook) Did Wally then contact you at any
14 time after that?

15 A Here and there, he'd contact me and said he's
16 working on the stuff, a few days here and there, and then he
17 contacted me once he got the--the titles cleared up, said he
18 had the titles in his name and said he wanted to come into
19 town and make a deal for it.

20 Q From the best of your recollection, what was that
21 date?

22 A Some time in February, the middle of February.

23 Q Okay.

24 A Probably around the 16th or 17th, somewhere.

25 Q If you would turn to Exhibit No. 6 and 7 and look at

1 those two documents and see if that refreshes your memory as
2 to the date?

3 A So, it's the 13th of February.

4 Q Is that the day that he came into town?

5 A Yeah.

6 Q All right.

7 A Yes.

8 Q Tell me what happened on the 13th.

9 A Well, he called me the--the day before, said he was
10 coming into town, I picked him up at the airport, brought him
11 to your office. We went over bill of sales, he had claimed
12 originally he wanted cashier's checks and then he called and
13 said he wanted cash, so me--it's, whatever, I'll get you the
14 cash.

15 We came to your office. He had--

16 Q What--what documents did he have with him at that
17 time?

18 A --California titles.

19 Q Would you turn to Exhibit--Exhibits 44 and 45--

20 A These are the Utah--the California ones.

21 Q Those are the California ones?

22 If you then would turn to Exhibits 49 and 50.

23 They're already--

24 THE COURT: They've already been--

25 MR. COOK: Yeah. They're already in evidence.

1 THE COURT: Thank you.
 2 THE WITNESS: 28th of 2006.
 3 MR. COOK: Okay.
 4 Q (By Mr. Cook) At the conclusion of that production,
 5 what did you do with the vehicles?
 6 A Well, we took them back to my warehouse, commissary,
 7 you know, proceeded to wrap the vehicles out, which was take
 8 all the food off and clean it and, you know, clean all the
 9 utensils and stuff that were on there, sanitize and put them
 10 back on the vehicles to get ready for the next time and--and
 11 park them at my warehouse.
 12 Q Okay. When you say wrap the vehicles and took the
 13 food off, you--are you referring to food that was immediately
 14 subject to being spoiled?
 15 A Stuff that you--you know, you can try to put in
 16 your--if you have a commissary, you have it walked it and you
 17 move it back into your commissary inventory.
 18 Q Just to make sure we're clear on the record--
 19 A Yeah.
 20 Q --did you remove any of the items that are set forth
 21 on Exhibit No. 32--34, Exhibit No. 34--
 22 A Those--
 23 Q --that you claimed as a loss?
 24 A Well, those are dry goods, so that stuff isn't stuff
 25 that you would remove right away. You would set up the stuff

1 that's going to--that you want to try and move back in right
 2 away, that--the--the meats, the cheeses, the dairy, the--the
 3 veggies, all that stuff needs to go back in your inventory
 4 right away and then you get the initial clean done and
 5 sanitize the vehicles, (inaudible) your utensils and then at a
 6 later date, you come back and--and sort out your dry goods
 7 stuff.
 8 I mean, the initial wrap is you have, basically,
 9 these are (inaudible) that give you one day, you and your guys
 10 to wrap out, so you're going to get the stuff that's the most
 11 urgent, and then if you have any down time later on, you go
 12 back and pick up the pieces on the stuff that--that you don't
 13 get done.
 14 Q Thank you. Your best recollection is, you returned
 15 the vehicles to your yard what day?
 16 A It was the 30th, we came back on the 30th.
 17 Q Okay.
 18 A Wrapped down on the 31st.
 19 Q Okay.
 20 A We parked the vehicle where we could, at the yard.
 21 And I came back on the 1st, Sunday morning, and the vehicles
 22 were gone.
 23 Q What did you do when you found out the vehicles were
 24 gone?
 25 A The first thing I did was call the police.

1 Q Did you file a police report?
 2 A Yes.
 3 Q Turn to Exhibit No. 28. Is this a copy of the
 4 police report that you filed?
 5 A Yes.
 6 MR. COOK: Move for the introduction of 28, your
 7 Honor.
 8 THE COURT: Any objections?
 9 MS. UITTO: No objections, your Honor.
 10 THE COURT: 28's received.
 11 MR. COOK: The rest of my questions would have been
 12 damage questions, your Honor, I'll reserve those.
 13 THE COURT: Very well.
 14 MR. COOK: And that's all I have at this time.
 15 THE COURT: Thank you, Mr. Cook.
 16 And before you start to cross, let's take a brief
 17 break. I'll come back out at a quarter to.
 18 (Recess)
 19 THE COURT: --appearances as previously indicated.
 20 Mr. Ruegner, you may have a--is on the stand now,
 21 subject to cross-examination by Ms. Uitto.
 22 CROSS-EXAMINATION
 23 BY MS. UITTO:
 24 Q Mr. Ruegner, you testified that approximately
 25 January 17th and 18th, or approximately January 17th, you

1 learned about the vehicles being in the State of Utah?
 2 A Around the 16th of--16th or 17th, somewhere in
 3 there.
 4 Q Okay. And he testified that the vehicles had All
 5 Star Catering painted on the side of them?
 6 A Just the cab, just the truck.
 7 Q Okay.
 8 A The truck had--had lettering, it wasn't painted. It
 9 was the letters about this big on the side.
 10 Q Okay. And what--
 11 THE COURT: Indicating by your hand about three
 12 feet?
 13 THE WITNESS: Maybe--maybe not even that, about like
 14 that, (inaudible)
 15 THE COURT: Well, the--the record can't--can't
 16 guess, so about 30 inches?
 17 THE WITNESS: It was about--probably about 30
 18 inches.
 19 THE COURT: All right. Thank you.
 20 Q (By Ms. Uitto) And you were also told that All Star
 21 Catering was owned by Rick Firkins by Brophy?
 22 A Yes.
 23 Q Okay. Who is Brophy?
 24 A Brophy's a--Brophy Jones is a--is a guy that's done
 25 some work for me in the past, in the business, and he--he's--I

...from that community, so you do know who the people are
3 in the business, so, he was introduced to us--to me, through
4 Jeff Wilkinson.

5 Q And what license plates were on the truck and
6 trailer when you first saw them?

7 A They had New Mexico license plates on them.

8 Q Okay. And you testified that on about January 18th,
9 you spoke to Wally for the first time?

10 A 18th or 19th, somewhere in there.

11 Q Okay. And after that conversation, you testified
12 that he was repossessing the vehicles from Mr. Firkins?

13 A He came into town and repossessed the vehicles from
14 Mr. Firkins.

15 Q Did he tell you that on the phone before he came
16 out, that he was repossessing the vehicles?

17 A He did say he wanted to come out and repossess the
18 vehicles.

19 Q Okay. When did he first come out to Salt Lake City?

20 A I think it was the 19th or 20th of January.

21 Q Okay. And he presented--you testified that he
22 presented Utah titles to you that had Rick Firkins' name on
23 them?

24 A Yes. He did.

25 Q And you testified that he--that you--that you found

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1 the titles to be unacceptable?

2 A Yes. I did.

3 Q Because you didn't know what Mr. Firkins' signature
4 looked like?

5 A Yes.

6 Q You also testified that Wally asked you to secure
7 the truck and trailer while he returned to California?

8 A Yes.

9 Q When did you take possession of the vehicles?

10 A If he was here on the 20th, I probably took
11 possession of them on the 21st or 22nd, one of those days.

12 Q And after that date, did they ever leave your
13 possession?

14 A No.

15 Q Where were they secured at?

16 A They were secured on property that I had
17 (inaudible).

8 Q On your father's property?

9 A Yes. On my father's.

0 Q What is the location of that property?

1 A 1375 East 4600 South.

2 Q Okay. And you testified also that when Wally came
3 out during this time, that he had to change to ignition in the
4 car--in the vehicles, to get them to work?

A Yes.

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Q So, he didn't have the proper keys?

2 A To the--to the cab of the truck and the ignition, he
3 did not.

4 Q Okay. You also stated in your answers to
5 interrogatories, and I can show these to you also, that in
6 about January of 200--January 23rd, you were receiving phone
7 calls from Rick and from Jeff Wilkinson?

8 A I--I couldn't attest to that, because I don't have
9 it here in front of me, but if you have something you could
10 show me to look at--

11 Q Sure.

12 A --then I can--then I can attest--

13 Q Sure. You can see my copy.

14 MS. UITTO: Can I approach, your Honor?

15 THE COURT: Thank you.

16 And again, both sides have leave to approach without
17 further permission from the Court.

18 THE WITNESS: Okay. Must be, yes.

19 Q (By Ms. Uitto) So, Mr. Firkins contacted you four
20 or five times about these vehicles?

21 A Actually, twice.

22 Q Okay. And he also contacted your wife?

23 A He spoke to my wife, once. He never spoke to me
24 directly.

25 Q Okay. And he also--Jeff Wilkinson, an employee of

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1 Mr. Firkins, contacted you?

2 A Once or twice.

3 Q And all phone calls--

4 A I never spoke to Jeff, either.

5 Q Okay. But all these phone calls related to the fact
6 that Rick still owned the truck?

7 A According to these phone calls, they were all very
8 threatening messages that were left on my--on my phone.

9 Q So, what were these messages?

10 A That I shouldn't get involved in the situation, that
11 it's none of my business and that Mr. Firkins owned this
12 vehicle.

13 Q So, you were put on notice on January 23rd that
14 someone else had adverse possession to these? Or claimed
15 ownership to these vehicles?

16 A That's what his--those folks said.

17 Q Okay. And during this time, Mr. Walters was back in
18 California, getting clear title to these vehicles, to present
19 to you?

20 A Correct.

21 Q Okay. And on about January 24th, you were contacted
22 by Wally, Mr. Walters, that he needed money for--to help with
23 the titling in Uta--in California D.M.V. and that you sent a
24 check to a Mr. Ted Miller in California?

25 A That's--if that's correct, that's correct.

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1 Q Okay. Did you ever remove the vehicles, once they
2 were on your father's property?
3 A I think we had to move them once to have them
4 weighed for the--for the servicing--
5 Q Okay. But at no time did they leave the State of
6 Utah?
7 A Never.
8 Q Did you ever meet Ted Miller?
9 A No.
10 Q Okay. I'm going to direct your attention to
11 Plaintiff's Exhibit 13, which is the last exhibit that we
12 entered. And after that third--third tab, you can go to the
13 one, two, third page in, titled verification of vehicle.
14 A Oh, from the front, the third page?
15 Q Yes. Third page in, verification of vehicle.
16 A Okay.
17 Q Okay.
18 A Okay. I see that, okay.
19 Q What is the date on this document?
20 A I don't see one on the front.
21 Q It's right next to Ted Miller's signature.
22 THE COURT: Lower right-hand corner.
23 THE WITNESS: 1-25-06.
24 MS. UITTO: Okay.
25 THE COURT: Are we all looking at the same page?

1 All right.
2 THE WITNESS: I hope.
3 Q (By Ms. Uitto) And if you read the sentence--excuse
4 me--if you read the statement above Ted B. Miller's
5 verification, where he printed his name, what is that
6 statement on the form?
7 A I certify under penalty and perjury of the laws of
8 the State of California that I examined the vehicle described
9 above and I find the description of the vehicle to be as
10 indicated.
11 Q But you just testified that the vehicles were on
12 your father's property here in Utah on that date?
13 A Yeah.
14 Q And not in the State of California?
15 A Yeah.
16 Q So, you mailed Ted Miller a check on approximately
17 January 24th to help Wally in securing the--the--the
18 California titles?
19 A Yeah.
20 Q And did Wally give you any direction as to whether
21 or not to tell anybody where the trucks were, or the vehicles
22 were?
23 A He just said keep them--keep them away, keep them
24 secure.
25 Q Okay.

1 A So--
2 Q Did you--did you state in your interrogatories that
3 he told me to keep them secret and not to tell anybody where
4 they're at?
5 A I don't recall, at this time.
6 Q Okay.
7 MS. UITTO: Can I approach?
8 THE COURT: Sure.
9 THE WITNESS: Well, he asked me to keep the location
10 of the truck and trailer private, to prevent anyone else from
11 taking them and he asked me to have the truck and trailer
12 weighed for purpose of titles.
13 Q (By Ms. Uitto) And this deal finally went down and
14 you finally saw Mr. Walters again on February 13th of 2006?
15 A Correct.
16 Q And he came to--he flew in to Salt Lake City and you
17 picked him up at the airport?
18 A Yes.
19 Q And what kind of titles did he have with him?
20 A California titles.
21 Q And how recently had they been issued?
22 A In the past few weeks.
23 Q Okay. So, Mr.--and during this time, Mr. Firkins
24 was contacting you and had contacted you about that he had
25 rights to these vehicles?

1 A The only time that Mr. Firkins had contacted me was
2 directly after he found out the vehicles had been repossessed.
3 THE COURT: And can I have some clarification on
4 this, Mr. Ruegner? Did you personally speak with Mr. Firkins
5 or the other gentleman or were there just messages left or
6 were there messages left and someone had spoken to your wife
7 and not to you? I'm--I'm confused.
8 THE WITNESS: There was messages left on my phone, I
9 was real busy that day, I had--I ended up having some issue
10 with one of my--one of my help, so I ended up having to
11 actually get on one of our--we were dealing with that
12 commercial in Everwood and I had to get on there and do actual
13 work and so I was very busy, we were behind 'cause one of my
14 cooks had walked off and--
15 THE COURT: Okay. Now, listen. So, you didn't talk
16 to him?
17 THE WITNESS: I didn't--I didn't have time to answer
18 the phone.
19 THE COURT: All right.
20 THE WITNESS: I was too busy.
21 THE COURT: So, messages were left?
22 THE WITNESS: And then--and then--then Mr. Firkins
23 did speak directly to my wife--
24 THE COURT: All right.
25 THE WITNESS: --which was a little disturbing.

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THE COURT: Okay.

THE WITNESS: The things he said to her were very threatening.

MS. UITTO: Okay.

Q (By Ms. Uitto) Did you ever return Mr. Firkins' phone calls?

A No.

Q Did you ever do any due diligence to find out if Mr. Firkins was telling the correct story?

A I--

MR. COOK: Objection to the form of the question. Calling for a conclusion as to what due diligence is and--and she broke--broke it down.

THE COURT: Well, yeah. Yeah. That's--that's often a term of art and without foundation that he even understands, or even I understand what due diligence means in this context, I'm going to sustain the objection.

Q (By Ms. Uitto) As a business owner, what type of investigation did you go in to what you learned that you had two people saying that they owned proper title to these vehicles, or had proper ownership?

A You know, I--I had spoken to people that were familiar with both--both of us, I also tried to contact Bryce Greer to find out what was going on with them and had some communication with him. That was the--the person that was

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1 there.

Q But you never spoke to Mr. Firkins?

A I never did.

Q Did you ever ask Mr. Walters to obtain a court order saying that he had proper title to these vehicles?

A No.

Q You also testified that you filed a claim with your insurance company.

A Yes.

Q What is the name of your insurance company?

A At the time, it was Ohio Casualty.

Q And what did they determine with regards to your claim?

A They said--they determined that it wasn't--didn't fall underneath our policy.

Q Didn't they also find that--the insurance company found that when you bought the vehicle, that you had full knowledge that Mr. Firkins could properly own the vehicle and therefore, you didn't have proper notice?

A I don't recall--

Q You--you had proper notice?

A I don't recall at this time.

Q Did you ever give a recorded statement to your insurance company?

A Yes.

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Q To your insurance company investigator?

So, during this time, you were approached by so that you sort of knew in the business, through a friend, through Brophy, about the sale of these vehicles?

A Uh huh (affirmative).

Q And during this time, you were also contacted by another individual that he owned the--the vehicles? Mr. Firkins contacted you?

A Right.

Q And when Mr. Walters first appeared, he presented you title with Mr. Firkins' name on them?

A Correct.

Q And he told you that he was repossessing the vehicles from Mr. Firkins?

A Correct.

Q But Mr. ve--Mr. Firkins' signature were on these documents?

A I--

Q Did you find it peculiar that someone who was under repossession would just sign over titles and yet be calling you at the same time?

A No.

Q You didn't think this was odd?

A No.

Q You also didn't think it odd that someone asked you

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1 to secure vehicles for them and to keep their location secret?

A No.

Q Did you also think it odd for someone to demand \$50,000 cash payment?

A No.

Q And you didn't think this was odd right after you declined Utah titles but insisted they be washed through the State of California?

A No.

Q Okay.

MS. UITTO: No further questions, your Honor.

THE COURT: Thank you.

Mr. Cook?

REDIRECT EXAMINATION

BY MR. COOK:

Q I'd like to turn back to Exhibit No. 31, which is a check in the amount of \$342 and you testified to as return--

MS. UITTO: I'm sorry? What exhibit?

MR. COOK: Exhibit 31.

Q (By Mr. Cook) Who is that made out to?

A D.M.V.

Q At the time you wrote out that check, did you even know a person by the name of Ted B. Miller?

A No.

Q At any time during this transaction, had anyone



STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES
A Public Service Agency

OFFICE OF THE DIRECTOR



0 6 0 3 0 B 0 1 N

dated on 8/25/06 at Sacramento, California.

by certify under penalty of perjury that the 8 attached
copy(ies) is/are a true and correct copy(ies) of the original document(s)
with the Department.

George Valverde

GEORGE VALVERDE, Director
Department of Motor Vehicles

By *M. [Signature]*

Sections 1530, 1531 and 1532, California Evidence Code, provide that photographic copies of the records of the Department of Motor Vehicles, when certified by the Department, shall be admitted in evidence with the same force and effect as the original records. Residence address information is restricted pursuant to 1808.21 C.V.C. In accordance with Section 1813 C.V.C., the above officer of the Department of Motor Vehicles has been authorized to prepare under seal and certify copies of records of this Department.

EV 4/2006)



E VEH
IV

TL: PA

LIC: 4GM4300

VEHICLE ID NUMBER
1K9EF3834E1044112

PIC
5

EXP DATE: PERM
AMOUNT PAID
\$ 36.00

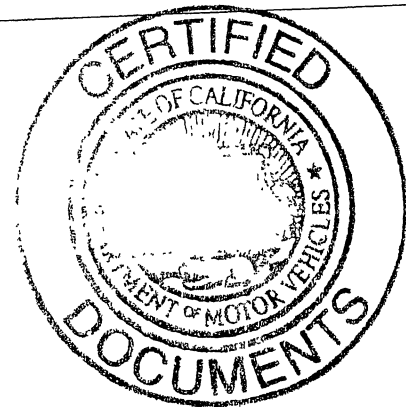
AMOUNT RECVD

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7 20.00
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OWNERSHIP/PTI (R)

TL: PA LIC: 4GM4300

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TYPE MODEL	MP	MO	AX	WC	UNLADEN WT					
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VEHICLE USE		DATE ISSUED		CC/ALCO		DT FEE RECVD		PIC		
ILER		01/30/06		19		01/23/06		5		

VEHICLE ID NUMBER
1K9EF3834E1044112

EXP DATE: PERM

AMOUNT PAID

\$ 36.00

TERED OWNER
LTER ZELIG

P*

A

AMOUNT DUE

AMOUNT RECVD

\$ 36.00
(MULTIPLE)

CASH :

CHCK :

CRDT :

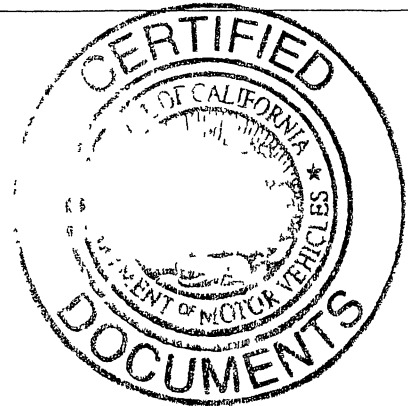
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B01 013006
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APPLICATION FOR TITLE OR REGISTRATION

11492

DMV USE ONLY

O/S DL #/STATE

TECH INITIALS

VEHICLE IDENTIFICATION NUMBER

K9EF3834E1044112

MAKE OF VEHICLE OR VESSEL BUILDER

84 UTIL

OWNER INFORMATION (Please print true full name of lessor/business name)

NAME OR LESSOR OR BUSINESS NAME

FIRST NAME

MIDDLE NAME

CALIFORNIA DRIVER LICENSE OR ID NUMBER

~~NAME OR LESSOR~~

WALTER

ZELIG

8 94442881

NAME OR LESSEE

FIRST NAME

MIDDLE NAME

CALIFORNIA DRIVER LICENSE OR ID NUMBER

NAME OR LESSEE

FIRST NAME

MIDDLE NAME

CALIFORNIA DRIVER LICENSE OR ID NUMBER

ADDRESS (If Different From Above)

APT./SPACE NO.

CITY

STATE

ZIP CODE

ADDRESS (If Different From Above)

APT./SPACE NO.

CITY

STATE

ZIP CODE

COACH ONLY - ADDRESS WHERE TRAILER IS LOCATED (If Different From Above)

CITY

STATE

ZIP CODE

TITLE HOLDER INFORMATION (Do NOT reenter owner's name) If "NONE," so print

BANK/FINANCE COMPANY OR INDIVIDUAL

ELECTRONIC TITLE NUMBER

SS OR RESIDENCE ADDRESS

APT./SPACE NO.

NONE

STATE

ZIP CODE

ADDRESS (If Different From Above)

APT./SPACE NO.

CITY

STATE

ZIP CODE

COST AND OPERATION INFORMATION (Purchase price does not include sales tax, insurance, finance charges, or warranty.)

S/KILOMETERS: If new owner, enter miles at date of purchase and check here. ☐
If no change of ownership, enter miles as of this date and check here. ☐

10 (no tenths) ☐ Miles ☐ Kilo. ☐ Is the actual mileage ☐ is not the actual mileage ☐ mileage exceeds the odometer mechanical limit

VEHICLE ENTERED OR WAS FIRST OPERATED IN CALIFORNIA

Day Yr.

DATE YOU WENT TO WORK IN CALIFORNIA OR BECAME A RESIDENT (WHICHEVER OCCURRED FIRST)

Mo. Day Yr.

VEHICLE PURCHASED OR ACQUIRED VEHICLE

1 Day 20 Yr. 06

COMPLETE IF SALES TAX WAS PAID TO ANOTHER STATE

I paid \$ in sales tax to a state other than California

IS USED ☒

YEAR MODEL

84

PURCHASED FROM:

☐ Dealer ☐ Family Member ☒ Private Party

CHECK ONE BOX AND ENTER CORRESPONDING PURCHASE PRICE OR MARKET VALUE

Purchase Price \$ - OR - ☐ Market Value (If gift or trade) \$ 3,000

Will this vehicle be used to carry people for hire (taxi, bus, etc.)? ☐ Yes ☐ No
When you acquired this vehicle were you on active duty in the U.S. Armed Forces? ☐ Yes ☐ No

yes, print name of state or country where stationed

Is this a commercial motor vehicle that operates at 10,001 lbs. or more (pickups excluded)? ☐ Yes ☐ No

yes, a Declaration of Gross Vehicle Weight/Combined Gross Vehicle Weight Form (REG 4008) must be completed.

yes, a Motor Carrier Permit may be required. Call (916) 657-8153 for further information.

OWNER(S) SIGNATURE(S)

Registered owner mailing address is valid, existing, and an accurate mailing address. I consent to receive service of process at this address pursuant to VC §1808.21.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE

EXECUTED AT CITY

STATE

DATE

DAYTIME TELEPHONE NUMBER

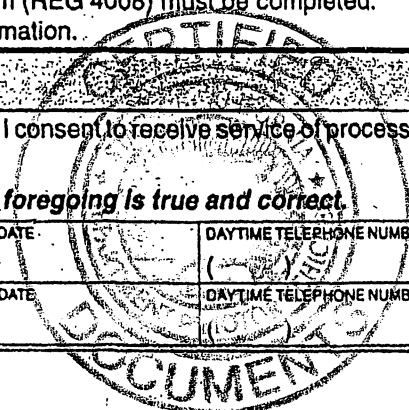
SIGNATURE

EXECUTED AT CITY

STATE

DATE

DAYTIME TELEPHONE NUMBER



UTAH CERTIFICATE OF TITLE

ORIGINAL TITLE



Title Number UT0922927

Vehicle Type TRAILER Year 1984 Make UTIL Model MOBILE KITCHEN Bdy Sty VAN
 VIN/HIN 1K9EF3834E1044112 2nd VIN Odometer 0
 Cylinders Fuel Date Issued 04/30/2002

#BWNGSFT

#1243 7796 81#

ALL STAR MOTION PICTURE CATERING
 4795 N HIGHWAY 40
 HEBER CITY UT 84032-3831

Owner Information

ALL STAR MOTION PICTURE CATERING
 4795 N HIGHWAY 40
 HEBER CITY UT 84032-3831

Lienholder Information

VEHICLE IS EXEMPT FROM ODOMETER REQUIRMENTS

Request For Lien Change

Complete this section. Send the title and required fee to the Division of Motor Vehicles. Please check one box.



Issue a title free of liens



Issue a title showing the following as the NEW LIEN HOLDER

LIEN RELEASE - Signature of Lien Holder (releasing interest)

Vehicle owner's signature requesting lien change

X

Title of signer

New lien holder's name

Date

Address

City

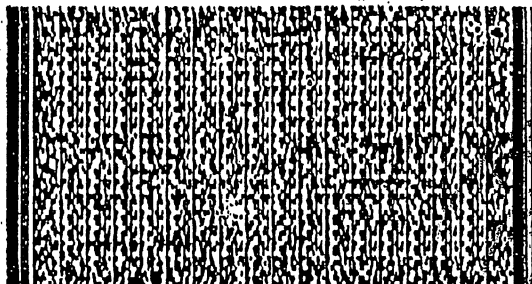
State ZIP Code

Division of Motor Vehicles
 UTAH STATE TAX COMMISSION
 210 North 1950 West
 Salt Lake City, Utah 84134



TC-127 Rev. 02/01 CDR

A 8400061



ANY ALTERATION OR ERASURE VOIDS THIS TITLE

CLIMEN

INSTRUCTIONS TO SELLER:

Type or print the information.
NOTARY PUBLIC IS NO LONGER NEEDED. KEEP A COPY.

INSTRUCTIONS TO BUYER:

Type or print the information. Warning: DO NOT SIGN IF ODOMETER DISCLOSURE IS NOT COMPLETE.

A 8400061

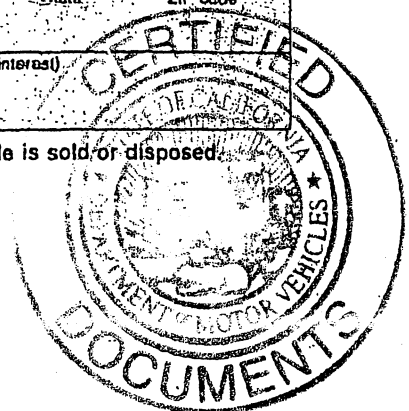
A Assignment Of Title By Registered Owner

SELLER	Odometer Disclosure - Required		<input checked="" type="checkbox"/> Reflects ACTUAL mileage <input type="checkbox"/> Reflects the mileage IN EXCESS of the odometer mechanical limits <input type="checkbox"/> Is not the actual mileage for this vehicle WARNING - ODOMETER DISCREPANCY		Sales/Purchase Price - Required	
	<div style="border: 1px solid black; padding: 2px;">18081</div> Enter odometer miles (no tenths)				Date of Sale: 7-20-06 Sale Price: \$ 3,800.00	
	Print name of seller: Rick Firkow's				Print name of authorized agent selling vehicle (if different from seller name):	
	Current address of seller (street, city, state and ZIP code):					
As owner, I hereby transfer all rights, title and interest to this vehicle to the new owner named below. I certify, to the best of my knowledge, that the title is free and clear of encumbrances, except the lien to the New Lien-Holder, if any. I certify that the odometer and sales information provided is correct. Federal and state law require that the owner provide the mileage upon transfer of ownership of a vehicle. Failure to complete a statement or by providing false statements, may result in fines and/or imprisonment. KEEP A PHOTOCOPY OF BOTH SIDES OF THIS SIGNED TITLE.						
Signature of seller (and joint seller): <i>[Signature]</i>						Date of Sale:
BUYER	Print name of new owner: ZELIG WALTER		Print name of new lien-holder:			
	Street Address:		Street Address:			
	City:	State:	ZIP Code:	City:	State:	ZIP code:
	Signature of buyer (new owner): <i>[Signature]</i>		Signature of lien-holder (releasing interest):			

B Reassignment Of Title

SELLER	Odometer Disclosure - Required		<input type="checkbox"/> Reflects ACTUAL mileage <input type="checkbox"/> Reflects the mileage IN EXCESS of the odometer mechanical limits <input type="checkbox"/> Is not the actual mileage for this vehicle WARNING - ODOMETER DISCREPANCY		Sales/Purchase Price - Required	
	<div style="border: 1px solid black; padding: 2px;"></div> Enter odometer miles (no tenths)				Date of Sale: Sale Price: \$	
	Print name of seller:				Print name of authorized agent selling vehicle (if different from seller name):	
	Current address of seller (street, city, state and ZIP code):					
As owner, I hereby transfer all rights, title and interest to this vehicle to the new owner named below. I certify, to the best of my knowledge, that the title is free and clear of encumbrances, except the lien to the New Lien-Holder, if any. I certify that the odometer and sales information provided is correct. Federal and state law require that the owner provide the mileage upon transfer of ownership of a vehicle. Failure to complete a statement or by providing false statements, may result in fines and/or imprisonment. KEEP A PHOTOCOPY OF BOTH SIDES OF THIS SIGNED TITLE.						
Signature of seller (and joint seller):						Date of Sale:
BUYER	Print name of new owner:		Print name of new lien-holder:			
	Street Address:		Street Address:			
	City:	State:	ZIP code:	City:	State:	ZIP code:
	Signature of buyer (new owner):		Signature of lien-holder (releasing interest):			

Utah Code 41-1a-701 requires the owner to remove the license plates when vehicle is sold or disposed.



803

Service Agency

VEHICLE/VESSEL TRANSFER AND REASSIGNMENT FORM

This form is not the ownership certificate. It must accompany the titling document or application for a duplicate title.
INSTRUCTIONS ON REVERSE SIDE ALL SIGNATURES MUST BE IN INK PHOTOCOPIES NOT ACCEPTED

SECTION 1: Vehicle/Vessel Description

IDENTIFICATION NUMBER	YEAR MODEL	MAKE	LICENSE PLATE/CF #	MOTORCYCLE ENGINE #
112	84	UTIL		

SECTION 2: Bill of Sale

We ALL STAR MOTION PICTURE CATER sell, transfer, and deliver the above vehicle/vessel
(PRINT SELLER'S NAME(S))

ZELIK WALTER
(PRINT BUYER'S NAME(S))

on 1 20 2006 for the amount of \$
MO DAY YR (SELLING PRICE)

this was a gift, indicate relationship: (e.g., parents, spouse, friend, etc.) \$ 3,000
(GIFT VALUE)

SECTION 3: Odometer Disclosure Statement (Valid if Mileage is Altered or Erased)

Federal and State Law requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

The odometer now reads (no tenths) miles, and to the best of my knowledge reflects the actual mileage unless one of the following statements is checked.

WARNING—ODOMETER DISCREPANCY

Odometer reading is NOT the actual mileage ☐ Mileage exceeds the odometer mechanical limits
plain odometer discrepancy:

SECTION 4: Buyer and Seller (MUST print his or her name, date and sign this section.)

BUYER

I acknowledge the odometer reading and the facts of the transfer. I certify under penalty of perjury under the laws of the State of California that the information I have provided is true and correct.

NAME <u>ZELIK WALTER</u>	SIGNATURE <u>[Signature]</u>	DATE <u> </u>	DL ID OR DEALER # <u> </u>
NAME <u> </u>	SIGNATURE <u> </u>	DATE <u> </u>	DL ID OR DEALER # <u> </u>
NAME <u> </u>	SIGNATURE <u> </u>	DATE <u> </u>	DL ID OR DEALER # <u> </u>
ADDRESS <u> </u>	CITY <u> </u>	STATE <u> </u>	ZIP <u> </u> DAYTIME PHONE # <u> </u>

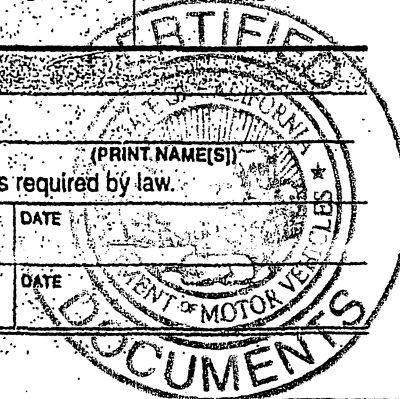
SELLER

I certify under penalty of perjury under the laws of the State of California that the information I have provided is true and correct.

NAME <u>ALL STAR MOTION PICTURE CATER</u>	SIGNATURE <u>[Signature]</u>	DATE <u> </u>	DL ID OR DEALER # <u> </u>
NAME <u>2KX FIXING</u>	SIGNATURE <u>[Signature]</u>	DATE <u> </u>	DL ID OR DEALER # <u> </u>
NAME <u> </u>	SIGNATURE <u> </u>	DATE <u> </u>	DL ID OR DEALER # <u> </u>
ADDRESS <u> </u>	CITY <u> </u>	STATE <u> </u>	ZIP <u> </u> DAYTIME PHONE # <u> </u>

SECTION 5: Power of Attorney

 appoint
(PRINT NAME(S)) (PRINT NAME(S))
attorney in fact, to complete all necessary documents, as needed, to transfer ownership as required by law.
are required by person appointing Power of Attorney DATE
are required by person appointing Power of Attorney DATE





PERMANENT TRAILER IDENTIFICATION (PTI) CERTIFICATION

*****USE THIS SIDE TO REQUEST A CERTIFICATE OF TITLE*****

This form cannot be used to replace a title that is lost, stolen, not received, or illegible/mutilated. Use Application for Duplicate Title (REG 227).

If there is no legal owner, and you would like to receive a Certificate of Title, please complete Sections 1 and 2 below.

The Department will issue a Permanent Trailer Identification Card and maintain an electronic record of ownership, whether a Certificate of Title is requested or not.

A trailer being titled with a legal owner (bank, finance company, etc.) will automatically be issued a Certificate of Title (\$10 PTI title fee).

TRAILER DESCRIPTION		
IDENTIFICATION PLATE NUMBER	VEHICLE IDENTIFICATION NUMBER	YEAR/MAKE
	1K9EF3834E1044112	84 VTL

SECTION 1: REQUEST A CERTIFICATE OF TITLE FOR DUPLICATE TITLE

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature required.

SIGNATURE	DATE	DAYTIME TELEPHONE NUMBER
<i>[Signature]</i>		()

SIDE A



ANENT TRAILER IDENTIFICATION (PTI) APPLICATION FOR:

Transfer without Certificate of Title (Current Owner completes Side A. To request a Duplicate title, use form REG 227.)
 Addition of Legal Owner Without Certificate of Title (To add a legal owner, Sections 1, 3 and 5 must be completed.)

IDENTIFICATION PLATE NUMBER	VEHICLE IDENTIFICATION NUMBER	YEAR/MAKE
-----------------------------	-------------------------------	-----------

TRAILER OWNER(S) OF RECORD

TRUE FULL NAME (LAST, FIRST, MIDDLE)		TRUE FULL NAME (LAST, FIRST, MIDDLE)	
RESIDENCE OR BUSINESS ADDRESS	APT./SPACE NUMBER	CITY	STATE ZIP CODE
MAILING ADDRESS (IF DIFFERENT FROM ABOVE)	APT./SPACE NUMBER	CITY	STATE ZIP CODE

TRAILER OWNER(S) OF RECORD RELEASE OF OWNERSHIP

No release ownership in the described trailer.

SIGNATURE OF OWNER	DATE	SIGNATURE OF OWNER	DATE
--------------------	------	--------------------	------

TRAILER OWNER(S) OF RECORD ADDING LEGAL OWNER ONLY

No release security interest in the described trailer.

SIGNATURE OF OWNER	DATE	SIGNATURE OF OWNER	DATE
--------------------	------	--------------------	------

NEW TRAILER OWNER(S) - Complete transfer within 10 days of taking possession of trailer

CHASE PRICE/MARKET VALUE (IF <input type="checkbox"/> GIFT OR <input type="checkbox"/> TRADE)	DATE PURCHASED OR ACQUIRED	EQUIPMENT NUMBER
Mo. Day Yr.		
TRUE FULL NAME(S) OF NEW OWNER(S) (AS SHOWN ON DRIVER LICENSE OR ID CARD)		DRIVER LICENSE/ID CARD NUMBER
LAST	FIRST MIDDLE	
LAST	FIRST MIDDLE	

MAILING ADDRESS (IF DIFFERENT FROM ABOVE)	APT./SPACE NUMBER	CITY	STATE	ZIP CODE
---	-------------------	------	-------	----------

I certify under penalty of perjury under the laws of the State of California that the information I have provided is true and correct and that the owner mailing address is valid, existing, and an accurate mailing address. I consent to receive service of process at this mailing address pursuant to Section 1808.21 of the Vehicle Code.

SIGNATURE(S) OF ALL NEW OWNER(S)	DATE	DAYTIME TELEPHONE NUMBER
	DATE	DAYTIME TELEPHONE NUMBER

NEW LEGAL OWNER (If no legal owner, write "none")

NAME OF NEW LEGAL OWNER - DO NOT ENTER NAME OF NEW REGISTERED OWNER(S) ABOVE	ELECTRONIC LIENHOLDER ID NO.
STREET OR P.O. BOX ADDRESS	ELT #
APT./SPACE NUMBER CITY	STATE ZIP CODE

LEASED VEHICLES

LEASE ADDRESS (IF DIFFERENT FROM OWNER ADDRESS ABOVE)

DEALER'S RELEASE OF ACQUIRED VEHICLE

NAME OF BUYER	DATE SOLD
NAME OF DEALERSHIP	DEALER NUMBER
SIGNATURE OF DEALER AGENT	PRINTED NAME OF DEALER AGENT
NAME OF BUYER	DATE SOLD
NAME OF DEALERSHIP	DEALER NUMBER
SIGNATURE OF DEALER AGENT	PRINTED NAME OF DEALER AGENT

SIDE B

REG 4017 (REV. 11/2002)